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OF MONTANA

MONTANA CODE ANNOTATED

Adopted by Chapter 1, Laws of 1979

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Published by the
MONTANA LEGISLATIVE COUNCIL
Room 138, State Capitol
Helena, Montana 59601
Telephone (406) 449-3064

1979

3
Printed by
COLOR WORLD OF MONTANA, INC.
201 E. Mendenhall, Bozeman, MT 59715

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1979
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PREFACE

Adoption

Senate Bill No. 1, adopting the Montana Code Annotated (cited "MCA"), was passed by the 1979 Legislature and became effective January 10, 1979. That bill, which became Chapter 1, Laws of 1979, follows this preface. The provisions of law relating to recodification are found in Title 1, Chapter 11, MCA.

Codification

The MCA is a compilation of existing permanent law, including the acts of the 46th Legislature of 1979. Appropriation acts, Resolutions, and laws temporary or special in character such as repealing, validating, severability, or effective date clauses are not codified. A list of R.C.M. 1947 sections not codified may be found in the *Table of Corresponding Code Sections,* 1978, green tab. Whenever 1979 law was not codified, the existence of such law is noted in a compiler's comment printed below a related code section.

Arrangement

The Montana Code Annotated is arranged topically. This feature distinguishes the new code from the 1947 code, in which the titles were arranged alphabetically. The user of the MCA will find titles that relate closely to one another logically and topically grouped together in the code. This arrangement results from four years of work that saw 15 revisions in the arrangement of titles. Continuous rearrangement designed to maintain an orderly and logical arrangement will be a permanent feature of the code under authority of Section 1-11-204(5)(b), MCA. Continuous revision should preclude the need for bulk revision in the future. The Legislative Council staff wants to hear your suggestions throughout the life of the code to assist in this effort.

Numbering System

The code uses a three element numbering system, familiar to 1947 code users because it is the numbering system incorporated in recent enactments such as the Uniform Commercial Code, Uniform Probate Code, and the Criminal Code. The number to the far left designates the title number, the number between the hyphens designates the chapter number, and the number to the right, the part and section number. Thus, 1-11-111 would be Title 1, Chapter 11, Part 1, Section 11. Numbering is sequential but numbers within chapters and parts and between titles have been skipped to leave room for future expansion.

Editorial Changes

During the recodification process the Council staff screened statutes for obsolescence, conflicts, unconstitutionality, incorrect grammar, spelling, capitalization, punctuation, numbering, and paragraphing.

Changes in style that could be made in the text without changing the substance of the law have been incorporated by the staff throughout the code. Other errors, inconsistencies, and unconstitutional statutes that were discovered were corrected by bills introduced in the 1977 and 1979 Legislative sessions at the request of the Code Commissioner.

Nonsubstantive changes include changes in the following areas:

(a) *Punctuation.* Being heavily laden with commas, the 1947 code did not conform with the more modern "open" style of punctuation that follows a sparing use of the comma. The modern style allowed deletion of an average of five commas per section and more than 125,000 commas from the new code with no change in its meaning, but with clarity enhanced.

(b) *Spelling.* The staff corrected obvious misspellings and updated archaic spellings with preferred spelling according to *Webster's New World Dictionary.*

(c) *Grammatical Construction.* There were three types of change that were made often under this category. One was making pronouns agree with their antecedents in number, gender, and person. Changing "nor" to "or" was also commonly done. "Nor" should not be used in the same clause with any other negative. Third, a verb often had to be changed to agree in number with the subject of a sentence.

(d) *Internal Numbering.* A uniform system of numbering internal paragraphs in a section was used: (1) (2) (3), (a) (b) (c), (i) (ii) (iii), (A) (B) (C). Thus, if the R.C.M. section began with "(a) (b) (c)," it was changed to "(1) (2) (3)," except for the Uniform Commercial Code, in which no changes in the numbering system were made.

(e) *"This Act".* The words "this act" were used thousands of times in the R.C.M. During recodification, "act" was changed wherever possible to a more precise term such as "title," "chapter," "part," or "section." The original act was studied to determine exactly to which statutes the words "this act" applied, and the appropriate references were then substituted.

(f) *Effective Date.* The calendar date was inserted whenever possible for expressions such as "the effective date of this act," after "passage and approval," or "hereafter."

(g) *Changes or Insertions Because of Rearrangement.* Language was inserted or changed whenever necessary because of rearrangement.

(h) *Redundancy.* Redundant words were eliminated.

(i) *Obsolete or Inaccurate References to Offices or Agencies.* There were many code sections needing changes because later acts affected names and terminology. For instance, the Executive Reorganization Act of 1971 abolished or renamed hundreds of offices and agencies. The recodification staff members searched the code for references to abolished or renamed offices and agencies. They also studied any amendments made between 1971 and 1977 that made further changes in the executive branch. After careful study to determine the exact state of the law, the language was changed during the recodification process to reflect the current legal status of all affected offices or agencies.

Code Commissioner Report

All changes, other than punctuation, capitalization, and spelling, made by the staff are reported in a Code Commissioner Official Report following each session [see Section 1-11-204(5)(c) MCA].

Effect of Changes

No presumption of legislative construction is to be drawn from the new code arrangement (Section 1-11-103, MCA). In case of inconsistencies resulting from omissions or other errors in the recodification, the version of the official enrolled bill on file with the Secretary of State will prevail. The recodification does not change the law, and the effect of each statute is the same as when originally enacted. Because the Code Commissioner has no legislative power, there can be no change in the law without legislative sanction. The function of recodification is to reorganize law, thus any changes in language are for the purpose of clarity, not for change in meaning.

Contents

(a) *Constitution and Rules of Court.* The code as adopted by Chapter 1, Laws of 1979, consists only of statute text and histories. The 1972 Montana Constitution, the Montana Rules of Civil Procedure, the Montana Rules of Appellate Civil Procedure, and the Montana Rules of Evidence are printed with the code for the convenience of the user.

(b) *Compiler's Comments.* Compiler's comments related to 1979 changes are also printed with the code.

(c) *Histories.* The user is cautioned to note that the reported history of each section in the MCA brought forward from the former code is the same history of the section as it appeared in the old code. When an R.C.M. section is split into several MCA sections, the history may be confusing or even misleading. To redo all histories to have them coincide exactly with MCA sections would have been nearly impossible. Legislative histories begin with the Bannack Statutes of 1864-65. References to the California Code and the Field Codes of New York are also included since those codes are the source of Montana's 1892 Civil Code. Abbreviations used in the MCA histories are as follows:

amd. — Amended
Ap.p. — Appears in part
C. — Code
C. Civ. Proc. — Code of Civil Procedure
Cal. — California
Ch. — Chapter
Civ. C. — Civil Code
Cod. — Codified
Comp. — Compiled
Div. — Division
En. — Enacted
Field — Field Code of New York
I.M. No. — Initiative Measure Number
L. — Laws of
MCA — Montana Code Annotated
p. — Page
Pen. C. — Penal Code
Pol. C. — Political Code
R.C.M. — Revised Codes of Montana
redes. — Redesignated
re-en. — Reenacted
rep. — Repealed
Rev. — Revised
Sec. — Section
Stat. — Statutes
Sup. Ct. Ord. — Supreme Court Order

(d) *Statements of Intent.* The 1979 Legislature was the first to adopt statements of intent (see Title 5, Chapter 4, Part 4, MCA, *The Legislative History Act,* and Joint Rule 11). These statements are referred to in the code in Compiler's Comments to the appropriate code section.

Annotations

Annotations and editorial aids to the new code will appear in separate volumes correlating to one or more volumes of statute text. The Annotations will be bound by Title and designed for insertion in three-ring binders. The annotations will be printed for the first time in late 1979 and early 1980 and released on a Title by Title basis. They will include chapter cross-references; comments of drafting commissions; editorial notes by the Council staff; digests of cases of the Montana Supreme Court and federal courts in Montana; recent Attorney General opinions; references to Law Review articles and sections of the Administrative Rules of Montana adopted under statutory authority; notations to statements of intent; references to encyclopedias, treatises, and state bar publications; and section cross and collateral references.

Index

The index is still not complete. The following titles are considered completely indexed: 1, 2, 3, 5, 10, 16, 17, 18, 19, 20, 22, 23, 28, 30, 31, 32, 35, 40, 41, 44, 45, 49, 67, 71, 82, 87, and 90. Any errors or other problems found in those titles should be reported to the Council staff. The remaining titles are only "mini" indexed at this time. That is, they are indexed by title, chapter, and part but not individual sections.

Conclusion

Each of the staff listed on the credit page herein is proud of the new code. We think it is very logically arranged and very easy to use. PLEASE let us know your gripes and complaints. (We don't mind praise either.) We do want to please you, the subscriber to the MCA.

Diana S. Dowling

Diana S. Dowling
Code Commissioner
State Capitol
Helena, Montana 59601

July, 1979

SENATE BILL NO. 1

1979

(Chapter 1, Laws of 1979)

AN ACT TO ADOPT THE MONTANA CODE ANNOTATED; AMENDING SECTION 1-11-301, MCA, TO PROVIDE FOR DEPOSIT OF PROCEEDS FROM SALES OF THE CODE INTO THE REVOLVING FUND AND TO TRANSFER THE AUTHORITY TO LET BIDS FOR PUBLICATION FROM THE DEPARTMENT OF ADMINISTRATION TO THE CODE COMMISSIONER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Adoption of code. (1) The Montana Code Annotated (1978) as recodified and published by the code commissioner under the authority of Chapter 419, Laws of 1975, as amended by Chapter 1, Laws of 1977, is adopted as prima facie the law of Montana.

(2) The Montana Code Annotated may be cited as "MCA" and shall be given effect as provided in section 6, Chapter 419, Laws of 1975, as amended by section 4, Chapter 1, Laws of 1977, and set forth in 1-11-103, MCA.

Section 2. Effect of publishing supreme court rules. (1) The legislature recognizes the supreme court's authority pursuant to Article VII, section 2, of the Montana constitution to make rules governing procedure and practice before the courts.

(2) The legislature also recognizes that the practice of printing such rules with the Montana statutes is of benefit to code users and facilitates implementation of Article VII, section 2 (3), of the Montana constitution concerning disapproval by the legislature.

(3) Therefore, the Montana Rules of Civil Procedure, printed as chapter 20, Title 25, MCA; the Montana Rules of Appellate Civil Procedure, printed as chapter 21, Title 25, MCA; and the Montana Rules of Evidence, printed as chapter 10, Title 26, MCA, appear only for the purpose of facilitating use of the code. Neither this act nor publication of the rules may be construed as an attempt to readopt or promulgate the rules.

Section 3. Section 1-11-301, MCA, is amended to read:

"1-11-301. Publication and sale of Montana Code Annotated. (1) The legislative council with the advice of the code commissioner shall decide on the quantity, quality, style, format, and grade of all publications prior to having the *code commissioner* contract for their publication. *The code commissioner shall follow the requirements of state law relating to contracts and bids except as herein provided.*

(2) The methods of sale to the public of the Montana Code Annotated and supplements or other subsequent and ancillary publications thereto may be included as an alternative specification and bid and as a part of a contract to be let by bids by the *code commissioner.*

(3) The sales price to the public shall be fixed by the legislative council but *may* not exceed the cost price plus 20%. All revenues generated from the sale of the Montana Code Annotated *or ancillary publications* shall be *deposited in the revolving fund, from which fund* appropriations *may be* made for the use of the office and facilities of the legislative council under this chapter.

(4) Sets of the Montana Code Annotated purchased by the state or local governmental agencies that are supported by public funds shall be for the cost price of the sets."

Section 4. Effective date. This act is effective on passage and approval.

CERTIFICATE OF CODE COMMISSIONER

The undersigned Code Commissioner, appointed pursuant to Chapter 419, Laws of 1975, as amended by Chapter 1, Laws of 1977, and directed to recodify all the laws of a general and permanent nature appearing in the codes and session laws and prepare them for publication, does hereby certify that the accompanying set of books, consisting of statute text, histories, and index volumes is the Montana Code Annotated (1979) as authorized by the above cited acts and adopted by the 46th Legislature by Senate Bill No. 1, Chapter 1, Laws of 1979, and effective on January 10, 1979.

Diana S Dowling

Diana S. Dowling
Code Commissioner

THE

CONSTITUTION

OF THE

STATE OF MONTANA

AS ADOPTED BY THE CONSTITUTIONAL CONVENTION
MARCH 22, 1972 AND AS RATIFIED BY THE PEOPLE, JUNE 6, 1972

Preamble

Article

I. Compact with the United States.
II. Declaration of Rights.
III. General Government.
IV. Suffrage and Elections.
V. The Legislature.
VI. The Executive.
VII. The Judiciary.
VIII. Revenue and Finance.
IX. Environment and Natural Resources.
X. Education and Public Lands.
XI. Local Government.
XII. Departments and Institutions.
XIII. General Provisions.
XIV. Constitutional Revision.

Transition Schedule

PREAMBLE

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution.

ARTICLE I

COMPACT WITH THE UNITED STATES

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676), as amended and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

ARTICLE II

DECLARATION OF RIGHTS

Section

1. Popular sovereignty.
2. Self-government.
3. Inalienable rights.
4. Individual dignity.
5. Freedom of religion.
6. Freedom of assembly.
7. Freedom of speech, expression, and press.
8. Right of participation.
9. Right to know.
10. Right of privacy.
11. Searches and seizures.
12. Right to bear arms.
13. Right of suffrage.
14. Adult rights.
15. Rights of persons not adults.
16. The administration of justice.
17. Due process of law.
18. State subject to suit.
19. Habeas corpus.
20. Initiation of proceedings.
21. Bail.
22. Excessive sanctions.
23. Detention.
24. Rights of the accused.
25. Self-incrimination and double jeopardy.
26. Trial by jury.
27. Imprisonment for debt.
28. Rights of the convicted.
29. Eminent domain.
30. Treason and descent of estates.
31. Ex post facto, obligation of contracts, and irrevocable privileges.
32. Civilian control of the military.
33. Importation of armed persons.
34. Unenumerated rights.
35. Servicemen, servicewomen, and veterans.

Section 1. Popular sovereignty. All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Section 2. Self-government. The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.

Section 3. Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Section 4. Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Section 5. Freedom of religion. The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Section 6. Freedom of assembly. The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.

Section 7. Freedom of speech, expression, and press. No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Section 8. Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Section 9. Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Section 10. Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Section 11. Searches and seizures. The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.

Section 12. Right to bear arms. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Section 13. Right of suffrage. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Section 14. Adult rights. A person 18 years of age or older is an adult for all purposes, except that the legislature or the people by initiative may establish an age of not more than 19 as the legal age for consuming or possessing alcoholic beverages.

Compiler's Comments

Amendment. Amendment proposed by Ch. 459, L. 1977, adopted at the general election held Nov. 7, 1978, was effective January 1, 1979. The amendment added the exception clause at the end of the section.

Section 15. Rights of persons not adults. The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.

Section 16. The administration of justice. Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay.

Section 17. Due process of law. No person shall be deprived of life, liberty, or property without due process of law.

Section 18. State subject to suit. The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property, except as may be specifically provided by law by a ⅔ vote of each house of the legislature.

Section 19. Habeas corpus. The privilege of the writ of habeas corpus shall never be suspended.

Section 20. Initiation of proceedings. (1) Criminal offenses within the jurisdiction of any court inferior to the district court shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a magistrate or after leave granted by the court, or by indictment without such examination, commitment or leave.

(2) A grand jury shall consist of eleven persons, of whom eight must concur to find an indictment. A grand jury shall be drawn and summoned only at the discretion and order of the district judge.

Section 21. Bail. All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

Section 22. Excessive sanctions. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

Section 23. Detention. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner provided by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof.

Section 24. Rights of the accused. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

Section 25. Self-incrimination and double jeopardy. No person shall be compelled to testify against himself in a criminal proceeding. No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction.

Section 26. Trial by jury. The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous.

Section 27. Imprisonment for debt. No person shall be imprisoned for debt except in the manner provided by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

Section 28. Rights of the convicted. Laws for the punishment of crime shall be founded on the principles of prevention and reformation. Full rights are restored by termination of state supervision for any offense against the state.

Section 29. Eminent domain. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

Section 30. Treason and descent of estates. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Section 31. Ex post facto, obligation of contracts, and irrevocable privileges. No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

Section 32. Civilian control of the military. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Section 33. Importation of armed persons. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislature, or of the governor when the legislature cannot be convened.

Section 34. Unenumerated rights. The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Section 35. Servicemen, servicewomen, and veterans. The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature.

ARTICLE III

GENERAL GOVERNMENT

Section

1. Separation of powers.
2. Continuity of government.
3. Oath of office.
4. Initiative.
5. Referendum.
6. Elections.
7. Number of electors.
8. Prohibition.
9. Gambling.

Section 1. Separation of powers. The power of the government of this state is divided into three distinct branches—legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Section 2. Continuity of government. The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the constitution. They shall be effective only during the period of emergency that affects a particular office or governmental operation.

Section 3. Oath of office. Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust.

Section 4. Initiative. (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held.

Section 5. Referendum. (1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state. A referendum petition shall be filed with the secretary of state no later than six months after adjournment of the legislature which passed the act.

(2) An act referred to the people is in effect until suspended by petitions signed by at least 15 percent of the qualified electors in a majority of the legislative representative districts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.

Section 6. Elections. The people shall vote on initiative and referendum measures at the general election unless the legislature orders a special election.

Section 7. Number of electors. The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

Section 8. Prohibition. The provisions of this Article do not apply to CONSTITUTIONAL REVISION, Article XIV.

Section 9. Gambling. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.

ARTICLE IV

SUFFRAGE AND ELECTIONS

Section
1. Ballot.
2. Qualified elector.
3. Elections.
4. Eligibility for public office.
5. Result of elections.
6. Privilege from arrest.

Section 1. Ballot. All elections by the people shall be by secret ballot.

Section 2. Qualified elector. Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

Section 3. Elections. The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process.

Section 4. Eligibility for public office. Any qualified elector is eligible to any public office except as otherwise provided in this constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.

Section 5. Result of elections. In all elections held by the people, the person or persons receiving the largest number of votes shall be declared elected.

Section 6. Privilege from arrest. A qualified elector is privileged from arrest at polling places and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace.

ARTICLE V

THE LEGISLATURE

Section
1. Power and structure.
2. Size.
3. Election and terms.
4. Qualifications.
5. Compensation.
6. Sessions.
7. Vacancies.
8. Immunity.
9. Disqualification.
10. Organization and procedure.
11. Bills.
12. Local and special legislation.
13. Impeachment.
14. Districting and apportionment.

Section 1. Power and structure. The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum.

Section 2. Size. The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fewer than 80 members.

Section 3. Election and terms. A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years each to begin on a date provided by law. One-half of the senators shall be elected every two years.

Section 4. Qualifications. A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county.

Section 5. Compensation. Each member of the legislature shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

Section 6. Sessions. The legislature shall meet each odd-numbered year in regular session of not more than 90 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

Section 7. Vacancies. A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

Section 8. Immunity. A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

Section 9. Disqualification. No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.

Section 10. Organization and procedure. (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting.

Section 11. Bills. (1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present and voting.

(2) Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill, containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of noncompliance with this section only within two years after its effective date.

Section 12. Local and special legislation. The legislature shall not pass a special or local act when a general act is, or can be made, applicable.

Section 13. Impeachment. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for impeachment and may select the senate as tribunal.

(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Section 14. Districting and apportionment. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

ARTICLE VI

THE EXECUTIVE

Section

1. Officers.
2. Election.
3. Qualifications.

4. Duties.
5. Compensation.
6. Vacancy in office.
7. 20 departments.
8. Appointing power.
9. Budget and messages.
10. Veto power.
11. Special session.
12. Pardons.
13. Militia.
14. Succession.
15. Information for governor.

Section 1. Officers. (1) The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor.

(2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this constitution and by law.

Section 2. Election. (1) The governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor shall be elected by the qualified electors at a general election provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and lieutenant governor are voted upon together in primary and general elections.

Section 3. Qualifications. (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or auditor unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

(2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

(3) The superintendent of public instruction shall have such educational qualifications as are provided by law.

Section 4. Duties. (1) The executive power is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this constitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor. No power specifically vested in the governor by this constitution may be delegated to the lieutenant governor.

(3) The secretary of state shall maintain official records of the executive branch and of the acts of the legislature, as provided by law. He shall keep the great seal of the state of Montana and perform any other duties provided by law.

(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

(5) The superintendent of public instruction and the auditor shall have such duties as are provided by law.

Section 5. Compensation. (1) Officers of the executive branch shall receive salaries provided by law.

(2) During his term, no elected officer of the executive branch may hold another public office or receive compensation for services from any other governmental agency. He may be a candidate for any public office during his term.

Section 6. Vacancy in office. (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, auditor, or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which his predecessor was elected.

Section 7. 20 departments. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department.

Section 8. Appointing power. (1) The departments provided for in section 7 shall be under the supervision of the governor. Except as otherwise provided in this constitution or by law, each department shall be headed by a single executive appointed by the governor subject to confirmation by the senate to hold office until the end of the governor's term unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the senate, all officers provided for in this constitution or by law whose appointment or

election is not otherwise provided for. They shall hold office until the end of the governor's term unless sooner removed by the governor.

(3) If a vacancy occurs in any such office when the legislature is not in session, the governor shall appoint a qualified person to discharge the duties thereof until the office is filled by appointment and confirmation.

(4) A person not confirmed by the senate for an office shall not, except at its request, be nominated again for that office at the same session, or be appointed to that office when the legislature is not in session.

Section 9. Budget and messages. The governor shall at the beginning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state.

Section 10. Veto power. (1) Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members present approve the bill, it shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons therefor to the legislature as provided by law. The legislature may reconvene to reconsider any bill so vetoed.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill.

Section 11. Special session. Whenever the governor considers it in the public interest, he may convene the legislature.

Section 12. Pardons. The governor may grant reprieves, commutations and pardons, restore citizenship, and suspend and remit fines and forfeitures subject to procedures provided by law.

Section 13. Militia. (1) The governor is commander-in-chief of the militia forces of the state, except when they are in the actual service of the United States. He may call out any part or all of the forces to aid in the execution of the laws, suppress insurrection, repel invasion, or protect life and property in natural disasters.

(2) The militia forces shall consist of all able-bodied citizens of the state except those exempted by law.

Section 14. Succession. (1) If the governor-elect is disqualified or dies, the lieutenant governor-elect upon qualifying for the office shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the governor-elect is able to assume office, or until the office, becomes vacant.

(2) The lieutenant governor shall serve as acting governor when so requested in writing by the governor. After the governor has been absent from the state for more than 45 consecutive days, the lieutenant governor shall serve as acting governor.

(3) He shall serve as acting governor when the governor is so disabled as to be unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor shall continue to serve as acting governor until the governor is able to resume the duties of his office.

(4) Whenever, at any other time, the lieutenant governor and attorney general transmit to the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene to determine whether he is able to do so.

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall serve as acting governor. Thereafter, when the governor transmits to the legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to serve as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this constitution.

(7) Additional succession to fill vacancies shall be provided by law.

(8) When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.

Section 15. Information for governor. (1) The governor may require information in writing, under oath when required, from the officers of the executive branch upon any subject relating to the duties of their respective offices.

(2) He may require information in writing, under oath, from all officers and managers of state institutions.

(3) He may appoint a committee to investigate and report to him upon the condition of any executive office or state institution.

ARTICLE VII

THE JUDICIARY

Section

1. Judicial power.
2. Supreme court jurisdiction.
3. Supreme court organization.
4. District court jurisdiction.
5. Justices of the peace.
6. Judicial districts.
7. Terms and pay.
8. Selection.
9. Qualifications.
10. Forfeiture of judicial position.
11. Removal and discipline.

Section 1. Judicial power. The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.

Section 2. Supreme court jurisdiction. (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.

(4) Supreme court process shall extend to all parts of the state.

Section 3. Supreme court organization. (1) The supreme court consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six. A majority shall join in and pronounce decisions, which must be in writing.

(2) A district judge shall be substituted for the chief justice or a justice in the event of disqualification or disability, and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice.

Section 4. District court jurisdiction. (1) The district court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction as may be delegated by the laws of the United States or the state of Montana. Its process shall extend to all parts of the state.

(2) The district court shall hear appeals from inferior courts as trials anew unless otherwise provided by law. The legislature may provide for direct review by the district court of decisions of administrative agencies.

(3) Other courts may have jurisdiction of criminal cases not amounting to felony and such jurisdiction concurrent with that of the district court as may be provided by law.

Section 5. Justices of the peace. (1) There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

(2) Justice courts shall have such original jurisdiction as may be provided by law. They shall not have trial jurisdiction in any criminal case designated a felony except as examining courts.

(3) The legislature may provide for additional justices of the peace in each county.

Section 6. Judicial districts. (1) The legislature shall divide the state into judicial districts and provide for the number of judges in each district. Each district shall be formed of compact territory and be bounded by county lines.

(2) The legislature may change the number and boundaries of judicial districts and the number of judges in each district, but no change in boundaries or the number of districts or judges therein shall work a removal of any judge from office during the term for which he was elected or appointed.

(3) The chief justice may, upon request of the district judge, assign district judges and other judges for temporary service from one district to another, and from one county to another.

Section 7. Terms and pay. (1) All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office.

(2) Terms of office shall be eight years for supreme court justices, six years for district court judges, four years for justices of the peace, and as provided by law for other judges.

Section 8. Selection. (1) The governor shall nominate a replacement from nominees selected in the manner provided by law for any vacancy in the office of supreme court justice or district court judge. If the governor fails to nominate within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the nomination. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

(2) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be placed on the ballot. If there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made.

(3) If an incumbent does not run, there shall be an election for the office.

Section 9. Qualifications. (1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No supreme court justice or district court judge shall solicit or receive compensation in any form whatever on account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state. Every other judge shall reside during his term of office in the district, county, township, precinct, city or town in which he is elected or appointed.

Section 10. Forfeiture of judicial position. Any holder of a judicial position forfeits that position by either filing for an elective public office other than a judicial position or absenting himself from the state for more than 60 consecutive days.

Section 11. Removal and discipline. (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, make rules implementing this section, and keep its proceedings confidential. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.

ARTICLE VIII

REVENUE AND FINANCE

Section

1. Tax purposes.
2. Tax power inalienable.
3. Property tax administration.
4. Equal valuation.
5. Property tax exemptions.
6. Highway revenue non-diversion.
7. Tax appeals.
8. State debt.
9. Balanced budget.

10. Local government debt.
11. Use of loan proceeds.
12. Strict accountability.
13. Investment of public funds.
14. Prohibited payments.

Section 1. Tax purposes. Taxes shall be levied by general laws for public purposes.

Section 2. Tax power inalienable. The power to tax shall never be surrendered, suspended, or contracted away.

Section 3. Property tax administration. The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

Section 4. Equal valuation. All taxing jurisdictions shall use the assessed valuation of property established by the state.

Section 5. Property tax exemptions. (1) The legislature may exempt from taxation:

(a) Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby.

Section 6. Highway revenue non-diversion. (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales and use taxes) on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used as authorized by the legislature, after deduction of statutory refunds and adjustments, solely for:

(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges.

(b) Payment of county, city, and town obligations on streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs.

(2) Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature.

Section 7. Tax appeals. The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level.

Section 8. State debt. No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislature or a majority of the electors voting thereon. No state debt shall be created to cover deficits incurred because appropriations exceeded anticipated revenue.

Section 9. Balanced budget. Appropriations by the legislature shall not exceed anticipated revenue.

Section 10. Local government debt. The legislature shall by law limit debts of counties, cities, towns, and all other local governmental entities.

Section 11. Use of loan proceeds. All money borrowed by or on behalf of the state or any county, city, town, or other local governmental entity shall be used only for purposes specified in the authorizing law.

Section 12. Strict accountability. The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.

Section 13. Investment of public funds. (1) The legislature shall provide for a unified investment program for public funds and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except for monies contributed to retirement funds, no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments bearing a fixed rate of interest as may be provided by law.

Section 14. Prohibited payments. Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.

ARTICLE IX

ENVIRONMENT AND NATURAL RESOURCES

Section
1. Protection and improvement.
2. Reclamation.
3. Water rights.

4. Cultural resources.
5. Severance tax on coal — trust fund.

Section 1. Protection and improvement. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Section 2. Reclamation. (1) All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

(2) The legislature shall provide for a fund, to be known as the resource indemnity trust of the state of Montana, to be funded by such taxes on the extraction of natural resources as the legislature may from time to time impose for that purpose.

(3) The principal of the resource indemnity trust shall forever remain inviolate in an amount of one hundred million dollars ($100,000,000), guaranteed by the state against loss or diversion.

Section 3. Water rights. (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

Section 4. Cultural resources. The legislature shall provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites, records and objects, and for their use and enjoyment by the people.

Section 5. Severance tax on coal — trust fund. The legislature shall dedicate not less than one-fourth (¼) of the coal severance tax to a trust fund, the interest and income from which may be appropriated. The principal of the trust shall forever remain inviolate unless appropriated by vote of three-fourths (¾) of the members of each house of the legislature. After December 31, 1979, at least fifty percent (50%) of the severance tax shall be dedicated to the trust fund.

ARTICLE X

EDUCATION AND PUBLIC LANDS

Section
1. Educational goals and duties.
2. Public school fund.
3. Public school fund inviolate.
4. Board of land commissioners.
5. Public school fund revenue.
6. Aid prohibited to sectarian schools.
7. Non-discrimination in education.
8. School district trustees.
9. Boards of education.
10. State university funds.
11. Public land trust, disposition.

Section 1. Educational goals and duties. (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Section 2. Public school fund. The public school fund of the state shall consist of: (1) Proceeds from the school lands which have been or may hereafter be granted by the United States,

(2) Lands granted in lieu thereof,

(3) Lands given or granted by any person or corporation under any law or grant of the United States,

(4) All other grants of land or money made from the United States for general educational purposes or without special purpose,

(5) All interests in estates that escheat to the state,

(6) All unclaimed shares and dividends of any corporation incorporated in the state,

(7) All other grants, gifts, devises or bequests made to the state for general educational purposes.

Section 3. Public school fund inviolate. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Section 4. Board of land commissioners. The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

Section 5. Public school fund revenue. (1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund, and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public school fund and become and forever remain an inseparable and inviolable part thereof.

Section 6. Aid prohibited to sectarian schools. (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

Section 7. Non-discrimination in education. No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

Section 8. School district trustees. The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

Section 9. Boards of education. (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Section 10. State university funds. The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

Section 11. Public land trust, disposition. (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other

land, public or private, which is equal in value and, as closely as possible, equal in area.

ARTICLE XI

LOCAL GOVERNMENT

Section
1. Definition.
2. Counties.
3. Forms of government.
4. General powers.
5. Self-government charters.
6. Self-government powers.
7. Intergovernmental cooperation.
8. Initiative and referendum.
9. Voter review of local government.

Section 1. Definition. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Section 2. Counties. The counties of the state are those that exist on the date of ratification of this constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

Section 3. Forms of government. (1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.

Section 4. General powers. (1) A local government unit without self-government powers has the following general powers:

(a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.

(b) A county has legislative, administrative, and other powers provided or implied by law.

(c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be liberally construed.

Section 5. Self-government charters. (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) Initiated by petition in the local government unit or combination of units; or

(b) Called by the governing body of the local government unit or combination of units.

(3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

Section 6. Self-government powers. A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Section 7. Intergovernmental cooperation. (1) Unless prohibited by law or charter, a local government unit may

(a) cooperate in the exercise of any function, power, or responsibility with,

(b) share the services of any officer or facilities with,

(c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

Section 8. Initiative and referendum. The legislature shall extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit.

Section 9. Voter review of local government. (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require an election in each local government to determine whether a local government will undertake a review procedure once every ten years after the first election. Approval by a majority of those voting in the decennial general election on the question of undertaking a local government review is necessary to mandate the election of a local government study commission. Study commission members shall be elected

during any regularly scheduled election in local governments mandating their election.

Compiler's Comments

Amendment. Amendment proposed by Ch. 70, L. 1977, adopted at the general election held November 7, 1978 was effective July 1, 1979. The amendment changed subsection (2) to provide for optional local government review, rather than mandatory review.

Sec. 2, Ch. 70, L. 1977, further provided: "Implementation. If not already implemented, the legislature shall implement this amendment with appropriate legislation in 1979, in order that the electors of each local government may indicate their preference 'For' or 'Against' the establishment of a study commission in 1984."

ARTICLE XII

DEPARTMENTS AND INSTITUTIONS

Section
1. Agriculture.
2. Labor.
3. Institutions and assistance.

Section 1. Agriculture. (1) The legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance, and develop all agriculture.

(2) Special levies may be made on livestock and on agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. Revenue derived shall be used solely for the purposes of the levies.

Section 2. Labor. (1) The legislature shall provide for a Department of Labor and Industry, headed by a Commissioner appointed by the governor and confirmed by the senate.

(2) A maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising. The legislature may change this maximum period to promote the general welfare.

Section 3. Institutions and assistance. (1) The state shall establish and support institutions and facilities as the public good may require, including homes which may be necessary and desirable for the care of veterans.

(2) Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. Suspended rights are restored upon termination of the state's responsibility.

(3) The legislature shall provide such economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities, or misfortune may have need for the aid of society.

ARTICLE XIII

GENERAL PROVISIONS

Section
1. Non-municipal corporations.
2. Consumer counsel.
3. Salary commission.

4. Code of ethics.
5. Exemption laws.
6. Perpetuities.

Section 1. Non-municipal corporations. (1) Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

(2) The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

(3) The legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

Section 2. Consumer counsel. The legislature shall provide for an office of consumer counsel which shall have the duty of representing consumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide for the funding of the office of consumer counsel by a special tax on the net income or gross revenues of regulated companies.

Section 3. Salary commission. The legislature shall create a salary commission to recommend compensation for the judiciary and elected members of the legislative and executive branches.

Section 4. Code of ethics. The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

Section 5. Exemption laws. The legislature shall enact liberal homestead and exemption laws.

Section 6. Perpetuities. No perpetuities shall be allowed except for charitable purposes.

ARTICLE XIV

CONSTITUTIONAL REVISION

Section

1. Constitutional convention.
2. Initiative for constitutional convention.
3. Periodic submission.
4. Call of convention.
5. Convention expenses.
6. Oath, vacancies.
7. Convention duties.
8. Amendment by legislative referendum.
9. Amendment by initiative.
10. Petition signers.
11. Submission.

Section 1. Constitutional convention. The legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution.

Section 2. Initiative for constitutional convention. (1) The people may by initiative petition direct the secretary of state to submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution. The petition shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The secretary of state shall certify the filing of the petition in his office and cause the question to be submitted at the next general election.

Section 3. Periodic submission. If the question of holding a convention is not otherwise submitted during any period of 20 years, it shall be submitted as provided by law at the general election in the twentieth year following the last submission.

Section 4. Call of convention. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session. The number of delegates to the convention shall be the same as that of the larger body of the legislature. The qualifications of delegates shall be the same as the highest qualifications required for election to the legislature. The legislature shall determine whether the delegates may be nominated on a partisan or a non-partisan basis. They shall be elected at the same places and in the same districts as are the members of the legislative body determining the number of delegates.

Section 5. Convention expenses. The legislature shall, in the act calling the convention, designate the day, hour, and place of its meeting, and fix and provide for the pay of its members and officers and the necessary expenses of the convention.

Section 6. Oath, vacancies. Before proceeding, the delegates shall take the oath provided in this constitution. Vacancies occurring shall be filled in the manner provided for filling vacancies in the legislature if not otherwise provided by law.

Section 7. Convention duties. The convention shall meet after the election of the delegates and prepare such revisions, alterations, or amendments to the constitution as may be deemed necessary. They shall be submitted to the qualified electors for ratification or rejection as a whole or in separate articles or amendments as determined by the convention at an election appointed by the convention for that purpose not less than two months after adjournment. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration, or amendment shall take effect.

Section 8. Amendment by legislative referendum. Amendments to this constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved by a majority of the electors voting thereon, the amendment shall become a part of this constitution on the first day of July after certification of the election returns unless the amendment provides otherwise.

Section 9. Amendment by initiative. (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise.

Section 10. Petition signers. The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for the office of governor in the preceding general election.

Section 11. Submission. If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately.

Done in open convention at the city of Helena, in the state of Montana, this twenty-second day of March, in the year of our Lord one thousand nine hundred and seventy-two.

Leo Graybill, Jr., President
Jean M. Bowman, Secretary
Magnus Aasheim
John H. Anderson, Jr.
Oscar L. Anderson
Harold Arbanas
Franklin Arness
Cedor B. Aronow
William H. Artz
Thomas M. Ask
Betty Babcock
Lloyd Barnard
Grace C. Bates
Don E. Belcher
Ben E. Berg, Jr.
E. M. Berthelson
Chet Blaylock
Virginia H. Blend
Geoffrey L. Brazier
Bruce M. Brown
Daphne Bugbee
William A. Burkhardt
Marjorie Cain
Bob Campbell
Jerome J. Cate
Richard J. Champoux

Lyman W. Choate
Max Conover
C. Louise Cross
Wade J. Dahood
Carl M. Davis
Douglas Delaney
Maurice Driscoll
Dave Drum
Dorothy Eck
Marian S. Erdmann
Leslie Eskildsen
Mark Etchart
James R. Felt
Donald R. Foster
Noel D. Furlong
J. C. Garlington
E. S. Gysler
Otto T. Habedank
Rod Hanson
R. S. Hanson
Gene Harbaugh
Paul K. Harlow
George Harper
Daniel W. Harrington
George B. Heliker
David L. Holland
Arnold W. Jacobsen
George H. James
Torrey B. Johnson
Thomas F. Joyce
A. W. Kamhoot
Robert Lee Kelleher
John H. Leuthold
Jerome T. Loendorf
Peter "Pete" Lorello
Joseph H. McCarvel
Russell C. McDonough
Mike McKeon
Charles B. McNeil
Charles H. Mahoney
Rachell K. Mansfield
Fred J. Martin
J. Mason Melvin
Lyle R. Monroe
Marshall Murray
Robert B. Noble
Richard A. Nutting
Mrs. Thomas Payne
Catherine Pemberton
Donald Rebal
Arlyne E. Reichert
Mrs. Mae Nan Robinson
Richard B. Roeder
George W. Rollins
Miles Romney
Sterling Rygg
Don Scanlin
John M. Schlitz
Henry Siderius
Clark E. Simon
Carman M. Skari
M. Lynn Sparks
Lucile Speer
R. J. Studer, Sr.
Mrs. John Justin
(Veronica) Sullivan
William H. Swanberg
John H. Toole
Mrs. Edith M. Van Buskirk
Robert Vermillion
Roger A. Wagner
Jack K. Ward
Margaret S. Warden
Archie O.Wilson
Robert F. Woodmansey

TRANSITION SCHEDULE

Transition Schedule. The following provisions shall remain part of this Constitution until their terms have been executed. Once each year the attorney general shall review the following provisions and certify to the secretary of state which, if any, have been executed. Any provisions so certified shall thereafter be removed from this Schedule and no longer published as part of this Constitution.

Section 1. Accelerated Effective Date

Section 2. Delayed Effective Date

Section 3. Prospective Operation of Declaration of Rights
Section 4. Terms of Judiciary
Section 5. Terms of Legislators
Section 6. General Transition.

Section 1. Accelerated effective date. Section 6 (SESSIONS) and section 14 (DISTRICTING AND APPORTIONMENT) of Article V, THE LEGISLATURE, shall be effective January 1, 1973.

Section 2. Delayed effective date. The provisions of sections 1, 2, and 3 of Article V, THE LEGISLATURE, shall not become effective until the date the first redistricting and reapportionment plan becomes law.

Section 3. Prospective operation of declaration of rights. Any rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive.

Section 4. Terms of judiciary. Supreme court justices, district court judges, and justices of the peace holding office when this Constitution becomes effective shall serve the terms for which they were elected or appointed.

Section 5. Terms of legislators. (1) The terms of all legislators elected before the effective date of this Constitution shall end on December 31 of the year in which the first redistricting and reapportionment plan becomes law.

(2) The senators first elected under this Constitution shall draw lots to establish a term of two years for one-half of their number.

Section 6. General transition. (1) The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations, and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution.

(2) The validity of all public and private bonds, debts, and contracts, and of all suits, actions, and rights of action, shall continue as if no change had taken place.

(3) All officers filling any office by election or appointment shall continue the duties thereof, until the end of the terms to which they were appointed or elected, and until their offices shall have been abolished or their successors selected and qualified in accordance with this Constitution or laws enacted pursuant thereto.

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CHAPTER 1

GENERAL PROVISIONS

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Part 1

Meaning of Law

1-1-101. Definition of law. "Law" is a solemn expression of the will of the supreme power of the state.

History: En. Sec. 5150, Pol. C. 1895; re-en. Sec. 3550, Rev. C. 1907; re-en. Sec. 5670, R.C.M. 1921; Cal. Pol. C. Sec. 4466; re-en. Sec. 5670, R.C.M. 1935; R.C.M. 1947, 12-101.

1-1-102. How expressed. The will of the supreme power is expressed by:

(1) the constitution;
(2) statutes.

History: En. Sec. 5151, Pol. C. 1895; re-en. Sec. 3551, Rev. C. 1907; re-en. Sec. 5671, R.C.M. 1921; Cal. Pol. C. Sec. 4467; re-en. Sec. 5671, R.C.M. 1935; R.C.M. 1947, 12-102.

1-1-103. Laws — written or unwritten. Laws, whether organic or ordinary, are either written or unwritten.

History: En. Sec. 3183, C. Civ. Proc. 1895; re-en. Sec. 7901, Rev. C. 1907; re-en. Sec. 10545, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1895; re-en. Sec. 10545, R.C.M. 1935; R.C.M. 1947, 93-1001-7.

1-1-104. Written law defined. A written law is that which is promulgated in writing and of which a record is in existence.

History: En. Sec. 3184, C. Civ. Proc. 1895; re-en. Sec. 7902, Rev. C. 1907; re-en. Sec. 10546, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1896; re-en. Sec. 10546, R.C.M. 1935; R.C.M. 1947, 93-1001-8.

1-1-105. Constitution and statutes. The organic law is the constitution of government and is altogether written. Other written laws are denominated statutes. The written law of this state is therefore contained in its constitution and statutes and in the constitution and statutes of the United States.

History: En. Sec. 3185, C. Civ. Proc. 1895; re-en. Sec. 7903, Rev. C. 1907; re-en. Sec. 10547, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1897; re-en. Sec. 10547, R.C.M. 1935; R.C.M. 1947, 93-1001-9.

1-1-106. Public and private statutes. Statutes are public or private. A private statute is one which concerns only certain designated individuals and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations.

History: En. Sec. 3186, C. Civ. Proc. 1895; re-en. Sec. 7904, Rev. C. 1907; re-en. Sec. 10548, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1898; re-en. Sec. 10548, R.C.M. 1935; R.C.M. 1947, 93-1001-10.

1-1-107. Unwritten law defined. Unwritten law is the law not promulgated and recorded, as mentioned in 1-1-104, but which is, nevertheless, observed and administered in the courts of the country. It has no certain repository but is collected from the reports of the decisions of the courts and treatises of learned men.

History: En. Sec. 3187, C. Civ. Proc. 1895; re-en. Sec. 7905, Rev. C. 1907; re-en. Sec. 10549, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1899; re-en. Sec. 10549, R.C.M. 1935; R.C.M. 1947, 93-1001-11.

1-1-108. Common law — applicability of. In this state there is no common law in any case where the law is declared by statute. But where not so declared, if the same is applicable and of a general nature and not in conflict with the statutes, the common law shall be the law and rule of decision.

History: En. Sec. 3452, C. Civ. Proc. 1895; re-en. Sec. 8060, Rev. C. 1907; re-en. Sec. 10703, R.C.M. 1921; re-en. Sec. 10703, R.C.M. 1935; R.C.M. 1947, 12-104.

1-1-109. Common law of England — when rule of decision. The common law of England, so far as it is not repugnant to or inconsistent with the constitution of the United States or the constitution or laws of this state, is the rule of decision in all the courts of this state.

History: En. p. 356, Bannack Stat.; re-en. p. 388, Cod. Stat. 1871; re-en. Sec. 144, 5th Div. Rev. Stat. 1879; re-en. Sec. 201, 5th Div. Comp. Stat. 1887; amd. Sec. 5152, Pol. C. 1895; re-en. Sec. 3552, Rev. C. 1907; re-en. Sec. 5672, R.C.M. 1921; Cal. Pol. C. Sec. 4468; re-en. Sec. 5672, R.C.M. 1935; R.C.M. 1947, 12-103.

Part 2

General Definitions of Terms Used in Code

1-1-201. Terms of wide applicability. (1) Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(a) "Oath" includes an affirmation or declaration.

(b) "Person" includes a corporation as well as a natural person.

(c) "Several" means two or more.

(d) "State", when applied to the different parts of the United States, includes the District of Columbia and the territories.

(e) "United States" includes the District of Columbia and the territories.

(2) Wherever the word "man" or "men" or a word which includes the syllable "man" or "men" in combination with other syllables, such as "workman", appears in this code, such word or syllable shall be deemed to include "woman" or "women" unless the context clearly indicates a contrary intent and unless the subject matter of the statute relates clearly and necessarily to the male sex only.

(3) Whenever the term "heretofore" occurs in any statute, it shall be construed to mean any time previous to the day such statute shall take effect.

Whenever the word "hereafter" occurs, it shall be construed to mean the time after the statute containing the term shall take effect.

History: (1)En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (2)En. 12-216 by Sec. 61, Ch. 535, L. 1975; Sec. 12-217, R.C.M. 1947; (3)En. Sec. 4670, Civ. C. 1895; re-en. Sec 6232, Rev. C. 1907; re-en. Sec. 8782, R.C.M. 1921; re-en. Sec. 8782, R.C.M. 1935; Sec. 19-104, R.C.M. 1947; R.C.M. 1947, 12-217, 19-103(part), (6), (7), (14), (27), (29), 19-104.

1-1-202. Terms relating to procedure and the judiciary. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) A "deposition" is a written declaration under oath or affirmation, made upon notice to the adverse party for the purpose of enabling him to attend and cross-examine.

(2) "Judicial officers" means justices of the supreme court, judges of the district courts, justices of the peace, municipal judges, and city judges.

(3) A "judicial record" is the record of official entry of the proceedings in a court of justice or of the official act of a judicial officer in an action or special proceeding.

(4) "Magistrate" means any officer described in 46-1-201(6).

(5) An "oral examination" is an examination in the presence of the jury or tribunal which is to decide the fact or act upon it, the testimony being heard by the jury or tribunal from the lips of the witness.

(6) "Process" means a writ or summons issued in the course of judicial proceedings.

(7) For purposes of legal notification, the term "registered mail" includes registered or certified mail.

(8) "Testify" includes every mode of oral statement under oath or affirmation.

(9) "Writ" means an order in writing issued in the name of the state or of a court or judicial officer.

History: Ap. p. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (1)En. Sec. 3322, C. Civ. Proc. 1895; re-en. Sec. 7989, Rev. C. 1907; re-en. Sec. 10633, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2004; re-en. Sec. 10633, R.C.M. 1935; Sec. 93-1601-3, R.C.M. 1947; (3)En. Sec. 3192, C. Civ. Proc. 1895; re-en. Sec. 7910, Rev. C. 1907; re-en. Sec. 10554, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1904; re-en. Sec. 10554, R.C.M. 1935; Sec. 93-1001-16, R.C.M. 1947; (5)En. Sec. 3323, C. Civ. Proc. 1895; re-en. Sec. 7990, Rev. C. 1907; re-en. Sec. 10634, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2005; Sec. 10634, R.C.M. 1935; Sec. 93-1601-4, R.C.M. 1947; (7)En. Sec. 1, Ch. 5, L. 1967; Sec. 19-122, R.C.M. 1947; R.C.M. 1947, 19-103(part), (9), (10), (13), (30), (31), (33), 19-122, 93-1001-16, 93-1601-3, 93-1601-4.

1-1-203. Terms relating to instruments and other writings. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) The "execution" of an instrument is the subscribing and delivering it, with or without affixing a seal.

(2) The term "folio", when used as a measure for computing fees, means 100 words, counting every two figures necessarily used as a word. Any portion of a folio, when in the whole paper there is not a complete folio and when there is an excess over the last folio exceeding one-half, may be computed as a folio.

(3) "Printing" is the act of reproducing a design on a surface by any process.

(4) "Signature" or "subscription" includes the mark of a person who cannot write if the person's name is written near the mark by another person who also signs his own name as a witness.

(5) A "subscribing witness" is one who sees a writing executed or hears it acknowledged and at the request of the party thereupon signs his name as a witness.

(6) "Writing" includes printing.

History: Ap. p. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (1)En. Sec. 3224, C. Civ. Proc. 1895; re-en. Sec. 7937, Rev. C. 1907; re-en. Sec. 10581, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1933; re-en. Sec. 10581, R.C.M. 1935; Sec. 93-1101-5, R.C.M. 1947; (2)En. Sec. 4618, Pol. C. 1895; re-en. Sec. 3151, Rev. C. 1907; re-en. Sec. 4899, R.C.M. 1921; re-en. Sec. 4899, R.C.M. 1935; Sec. 25-215, R.C.M. 1947; (3)En. Sec. 1, Ch. 267, L. 1969; amd. Sec. 11, Ch. 100, L. 1973; Sec. 19-103.1, R.C.M. 1947; (5)En. Sec. 3226, C. Civ. Proc. 1895; re-en. Sec. 7939, Rev. C. 1907; re-en. Sec. 10583, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1935; re-en. Sec. 10583, R.C.M. 1935; Sec. 93-1101-7, R.C.M. 1947; R.C.M. 1947, 19-103(part), (28), (32), 19-103.1, 25-215, 93-1101-5, 93-1101-7.

1-1-204. Terms denoting state of mind. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Corruptly" denotes a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to or to some other person.

(2) "Knowingly" denotes only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of the act or omission.

(3) "Malice" and "maliciously" denote a wish to vex, annoy, or injure another person or an intent to do a wrongful act, established either by proof or presumption of law.

(4) "Neglect", "negligence", "negligent", and "negligently" denote a want of the attention to the nature or probable consequences of the act or omission that a prudent man would ordinarily give in acting in his own concerns.

(5) "Willfully", when applied to the intent with which an act is done or omitted, denotes a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate the law, to injure another, or to acquire any advantage.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part), (19) thru (23).

1-1-205. Terms relating to property and decedents' estates. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Personal property" means money, goods, chattels, things in action, and evidences of debt.

(2) "Pledge", "mortgage", "conditional sale", "lien", "assignment", and like terms, when used in referring to a security interest in personal property, include a corresponding type of security interest under the Uniform Commercial Code—Secured Transactions.

(3) "Property" means real and personal property.

(4) "Real property" means lands, tenements, hereditaments, and possessory title to public lands.

(5) "Will" includes codicils.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part), (1), (2), (3), (8), (26).

1-1-206. Terms relating to obligations and transactions. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Customary" means according to usage.

(2) "Third persons" means all persons who are not parties to the obligation or transaction concerning which the phrase is used.

(3) "Usage" means a reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the parties or so well established, general, and uniform that the parties must be presumed to have acted with reference thereto.

(4) "Usual" means according to usage.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part), (15) thru (18).

1-1-207. Miscellaneous terms. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Bribe" means anything of value or advantage, present or prospective, or any promise or undertaking to give anything of value or advantage, which is asked, given, or accepted with a corrupt intent to unlawfully influence the person to whom it is given in his action, vote, or opinion in any public or official capacity.

(2) "Peace officer" means any person described in 46-1-201(8).

(3) "Vessel", when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats, and every structure adapted to be navigated from place to place.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part), (11), (12), (24).

1-1-208 through 1-1-214 reserved.

1-1-215. Residence — rules for determining. Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

(1) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose and to which he returns in seasons of repose.

(2) There can only be one residence.

(3) A residence cannot be lost until another is gained.

(4) The residence of his parents or, if one of them is deceased or they do not share the same residence, the residence of the parent having legal custody or, if neither parent has legal custody, the residence of the parent with whom he customarily resides is the residence of the unmarried minor child. In case of a controversy, the district court may declare which parental residence is the residence of an unmarried minor child.

(5) The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.

(6) The residence can be changed only by the union of act and intent.

History: En. Sec. 72, Pol. C. 1895; re-en. Sec. 32, Rev. C. 1907; re-en. Sec. 33, R.C.M. 1921; Cal. Pol. C. Sec. 52; re-en. Sec. 33, R.C.M. 1935; amd. Sec. 4, Ch. 164, L. 1975; R.C.M. 1947, 83-303.

1-1-216. Legal holidays and business days. (1) The following are legal holidays in the state of Montana:

(a) Each Sunday;
(b) New Year's Day, January 1;
(c) Lincoln's Birthday, February 12;
(d) Washington's Birthday, the third Monday in February;
(e) Memorial Day, the last Monday in May;
(f) Independence Day, July 4;
(g) Labor Day, the first Monday in September;
(h) Columbus Day, the second Monday in October;
(i) Veterans' Day, November 11;
(j) Thanksgiving Day, the fourth Thursday in November;
(k) Christmas Day, December 25;
(l) State general election day.

(2) If any of the above-enumerated holidays (except Sunday) fall upon a Sunday, the Monday following is a holiday. All other days are business days.

History: En. Sec. 10, Pol. C. 1895; re-en. Sec. 10, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1921; re-en. Sec. 10, R.C.M. 1921; Cal. Pol. C. Secs. 10-11; re-en. Sec. 10, R.C.M. 1935; amd. Sec. 1, Ch. 209, L. 1955; amd. Sec. 1, Ch. 6, L. 1965; amd. Sec. 1, Ch. 89, L. 1969; amd. Sec. 6, Ch. 32, L. 1971; amd. Sec. 1, Ch. 16, L. 1974; R.C.M. 1947, 19-107(part).

1-1-217. Notice — actual and constructive. (1) Notice is:

(a) actual whenever it consists of express information of a fact;
(b) constructive whenever it is imputed by law.

(2) Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact has constructive notice of the fact itself in all cases in which, by prosecuting such inquiry, he might have learned such facts.

History: (1)En. Sec. 4666, Civ. C. 1895; re-en. Sec. 6228, Rev. C. 1907; re-en. Sec. 8780, R.C.M. 1921; Cal. Civ. C. Sec. 18; Based on Field Civ. C. Secs. 2009, 2010; re-en. Sec. 8780, R.C.M. 1935; amd. Sec. 4, Ch. 309, L. 1977; Sec. 19-105, R.C.M. 1947; (2)En. Sec. 4667, Civ. C. 1895; re-en. Sec. 6229, Rev. C. 1907; re-en. Sec. 8781, R.C.M. 1921; Cal. Civ. C. Sec. 19; Based on Field Civ. C. Sec. 2011; re-en. Sec. 8781, R.C.M. 1935; R.C.M. 1947, 19-106; R.C.M. 1947, 19-105, 19-106.

1-1-218. Words giving joint authority. Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them unless it is otherwise expressed in the act giving the authority.

History: En. Sec. 14, Pol. C. 1895; re-en. Sec. 14, Rev. C. 1907; re-en. Sec. 14, R.C.M. 1921; Cal. Pol. C. Sec. 15; re-en. Sec. 14, R.C.M. 1935; R.C.M. 1947, 19-101.

1-1-219. Relationship by affinity. (1) Unless the context requires otherwise, in this code "affinity" means the relation which one spouse has, by virtue of the marriage, to blood relatives of the other. Therefore, a person has the same relation by affinity to his spouse's blood relatives as his spouse has to them by consanguinity and vice versa.

(2) Degrees of relationship by affinity are computed in the same manner as degrees of relationship by consanguinity.

(3) Notwithstanding subsection (1), the term "affinity" includes the relation of husband and wife. Husband and wife are considered to be related by affinity in the first degree.

History: En. Sec. 1, Ch. 119, L. 1979.

Part 3

Rules Concerning Time

1-1-301. Definitions. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Year" means a calendar year.

(2) "Month" means a calendar month.

(3) A "week" consists of 7 consecutive days.

(4) A "day" is the period of time between any midnight and the midnight following.

(5) "Daytime" is the period of time between sunrise and sunset, and "nighttime" is the period of time between sunset and sunrise.

History: Ap. p. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (3)En. Sec. 3143, Pol. C. 1895; re-en. Sec. 2030, Rev. C. 1907; re-en. Sec. 4280, R.C.M. 1921; Cal. Pol. C. Sec. 3258; re-en. Sec. 4280, R.C.M. 1935; Sec. 90-404, R.C.M. 1947; (4)En. Sec. 3144, Pol. C. 1895; re-en. Sec. 2031, Rev. C. 1907; re-en. Sec. 4281, R.C.M. 1921; Cal. Pol. C. Sec. 3259; re-en. Sec. 4281, R.C.M. 1935; Sec. 90-405, R.C.M. 1947; (5)En. Sec. 3145, Pol. C. 1895; re-en. Sec. 2032, Rev. C. 1907; re-en. Sec. 4282, R.C.M. 1921; Cal. Pol. C. Sec. 3260; re-en. Sec. 4282, R.C.M. 1935; Sec. 90-406, R.C.M. 1947; R.C.M. 1947, 19-103(part), (4), (5), 90-404, 90-405, 90-406.

1-1-302. Computation of time — what calendar used. Time is computed according to the Gregorian or new style, and January 1 in every year passed since 1752 or to come must be reckoned as the first day of the year.

History: En. Sec. 3140, Pol. C. 1895; re-en. Sec. 2027, Rev. C. 1907; re-en. Sec. 4277, R.C.M. 1921; Cal. Pol. C. Sec. 3255; re-en. Sec. 4277, R.C.M. 1935; R.C.M. 1947, 90-401.

1-1-303. Leap year. Except the year 1900, every fourth year which, by usage in this state, is considered a leap year is a leap year consisting of 366 days.

History: En. Sec. 3141, Pol. C. 1895; re-en. Sec. 2028, Rev. C. 1907; re-en. Sec. 4278, R.C.M. 1921; Cal. Pol. C. Sec. 3256; re-en. Sec. 4278, R.C.M. 1935; R.C.M. 1947, 90-402.

1-1-304. Computation of fractions of a year. Fractions of a year are computed by the number of months; thus, half a year is 6 months.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309. L. 1977; R.C.M. 1947, 19-103(part).

1-1-305. Computation of time — when fractions of a day disregarded. Fractions of a day are disregarded in computations which include more than 1 day and involve no questions of priority.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part).

1-1-306. Computation of time — which days counted. The time in which any act provided by law is to be done is computed by excluding the first day and including the last unless the last day is a holiday, and then it is also excluded.

History: En. Sec. 430, p. 130, Bannack Stat.; amd. Sec. 501, p. 233, L. 1867; re-en. Sec. 578, p. 153, Cod. Stat. 1871; re-en. Sec. 519, p. 176, L. 1877; re-en. Sec. 519, 1st Div. Rev. Stat. 1879; re-en. Sec. 536, 1st Div. Comp. Stat. 1887; amd. Sec. 3459, C. Civ. Proc. 1895; re-en. Sec. 8067, Rev. C. 1907; re-en. Sec. 10707, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 12; re-en. Sec. 10707, R.C.M. 1935; R.C.M. 1947, 90-407.

1-1-307. Postponement of day appointed for an action when it falls on a holiday. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

History: En. Sec. 12, Pol. C. 1895; re-en. Sec. 12, Rev. C. 1907; re-en. Sec. 12, R.C.M. 1921; Cal. Pol. C. Sec. 13; re-en. Sec. 12, R.C.M. 1935; R.C.M. 1947, 19-109.

Part 4

Citizenship

1-1-401. People defined. The people, as a political body, consist of:

(1) electors;

(2) citizens not electors.

History: En. Sec. 70, Pol. C. 1895; re-en. Sec. 30, Rev. C. 1907; re-en. Sec. 31, R.C.M. 1921; Cal. Pol. C. Sec. 50; re-en. Sec. 31, R.C.M. 1935; R.C.M. 1947, 83-301.

1-1-402. Citizens defined. The citizens of the state are:

(1) all persons born in this state and residing within it, except the children of transient aliens;

(2) all persons born out of this state who are citizens of the United States and residing within this state.

History: En. Sec. 71, Pol. C. 1895; re-en. Sec. 31, Rev. C. 1907; re-en. Sec. 32, R.C.M. 1921; Cal. Pol. C. Sec. 51; re-en. Sec. 32, R.C.M. 1935; R.C.M. 1947, 83-302.

1-1-403. Allegiance. Allegiance is the obligation of fidelity and obedience which every citizen owes to the state.

History: En. Sec. 81, Pol. C. 1895; re-en. Sec. 34, Rev. C. 1907; re-en. Sec. 35, R.C.M. 1921; Cal. Pol. C. Sec. 55; re-en. Sec. 35, R.C.M. 1935; R.C.M. 1947, 83-402.

1-1-404. Allegiance — how renounced. Allegiance may be renounced by a change of residence.

History: En. Sec. 82, Pol. C. 1895; re-en. Sec. 35, Rev. C. 1907; re-en. Sec. 36, R.C.M. 1921; Cal. Pol. C. Sec. 56; re-en. Sec. 36, R.C.M. 1935; R.C.M. 1947, 83-403.

1-1-405. Persons not citizens. Persons in this state not its citizens are either:

(1) citizens of other states; or

(2) aliens.

History: En. Sec. 83, Pol. C. 1895; re-en. Sec. 36, Rev. C. 1907; re-en. Sec. 37, R.C.M. 1921; Cal. Pol. C. Sec. 57; re-en. Sec. 37, R.C.M. 1935; R.C.M. 1947, 83-404.

Part 5

State Symbols

1-1-501. Great seal. The great seal of the state is as follows: a central group representing a plow and a miner's pick and shovel; upon the right, a representation of the Great Falls of the Missouri River; upon the left, mountain scenery; and underneath, the words "Oro y Plata". The seal must be 2 ½ inches in diameter and surrounded by these words, "The Great Seal of the State of Montana".

History: En. Sec. 1, p. 42, L. 1893; re-en. Sec. 1130, Pol. C. 1895; re-en. Sec. 430, Rev. C. 1907; re-en. Sec. 526, R.C.M. 1921; re-en. Sec. 526, R.C.M. 1935; R.C.M. 1947, 19-111.

1-1-502. State flag. There is hereby established a state flag of Montana. The state flag of Montana shall be a flag having a blue field with a representation of the great seal of the state in the center and with golden fringe along the upper and lower borders of the flag; the same being the flag borne by the 1st Montana Infantry, U.S.V., in the Spanish-American War, with the exception of the device, "1st Montana Infantry, U.S.V.".

History: Ap. p. Sec. 1, Ch. 42, L. 1905; re-en. Sec. 432, Rev. C. 1907; re-en. Sec. 528, R.C.M. 1921; re-en. Sec. 528, R.C.M. 1935; Sec. 19-113, R.C.M. 1947; Ap. p. Sec. 2, Ch. 42, L. 1905; re-en. Sec. 433, Rev. C. 1907; re-en. Sec. 529, R.C.M. 1921; re-en. Sec. 529, R.C.M. 1935; Sec. 19-114, R.C.M. 1947; R.C.M. 1947, 19-113, 19-114.

1-1-503. State floral emblem. The flower known as Lewisia rediviva (bitterroot) shall be the floral emblem of the state of Montana.

History: En. Sec. 3282, Pol. C. 1895; re-en. Sec. 2097, Rev. C. 1907; re-en. Sec. 530, R.C.M. 1921; re-en. Sec. 530, R.C.M. 1935; R.C.M. 1947, 19-115.

1-1-504. State bird. The bird known as the western meadowlark, Sturnella neglecta (Audubon), as preferred by a referendum vote of Montana school children, shall be designated and declared to be the official bird of the state of Montana.

History: En. Sec. 1, Ch. 149, L. 1931; re-en. Sec. 530.1, R.C.M. 1935; R.C.M. 1947, 19-116.

1-1-505. State gem stones. The sapphire and the Montana agate are the official Montana state gem stones.

History: En. Sec. 1, Ch. 20, L. 1969; R.C.M. 1947, 19-123.

1-1-506. State grass. The grass known as bluebunch wheatgrass, Agropyron spicatum (pursh), shall be designated and declared to be the official grass of the state of Montana.

History: En. 19-124 by Sec. 1, Ch. 378, L. 1973; R.C.M. 1947, 19-124.

1-1-507. State fish. The blackspotted cutthroat trout, Salmo clarki, is the official Montana state fish.

History: En. Sec. 1, Ch. 6, L. 1977; R.C.M. 1947, 19-125.

CHAPTER 2

STATUTORY CONSTRUCTION

Part 1 — General Provisions

Section

1-2-101. Role of the judge — preference to construction giving each provision meaning.
1-2-102. Intention of the legislature — particular and general provisions.
1-2-103. Statutes in derogation of the common law — liberal construction.
1-2-104. Preference to construction favoring natural right.
1-2-105. General definitional rules — verb tense, gender, and number.
1-2-106. Construction of words and phrases.
1-2-107. Applicability of definitions.
1-2-108. Reference to other titles, chapters, parts, or sections — subsequent amendments.
1-2-109. When laws retroactive.
1-2-110. All statutes subject to repeal.
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1-2-201. Statutes — effective date.
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1-2-205. Repeal of law creating criminal offense.
1-2-206. Repeal of repealed statute.
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Part 1

General Provisions

1-2-101. Role of the judge — preference to construction giving each provision meaning. In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

History: En. Sec. 612, p. 198, L. 1877; re-en. Sec. 612, 1st Div. Rev. Stat. 1879; re-en. Sec. 630, 1st Div. Comp. Stat. 1887; re-en. Sec. 3134, C. Civ. Proc. 1895; re-en. Sec. 7875, Rev. C. 1907; re-en. Sec. 10519, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1858; re-en. Sec. 10519, R.C.M. 1935; R.C.M. 1947, 93-401-15(part).

1-2-102. Intention of the legislature — particular and general provisions. In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.

History: En. Sec. 613, p. 198, L. 1877; re-en. Sec. 613, 1st Div. Rev. Stat. 1879; re-en. Sec. 631, 1st Div. Comp. Stat. 1887; re-en. Sec. 3135, C. Civ. Proc. 1895; re-en. Sec. 7876, Rev. C. 1907; re-en. Sec. 10520, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1859; re-en. Sec. 10520, R.C.M. 1935; R.C.M. 1947, 93-401-16(part).

1-2-103. Statutes in derogation of the common law — liberal construction. The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to the statutes of the state of Montana. The statutes establish the law of this state respecting the subjects to which they relate, and their provisions and all proceedings under them are to be liberally construed with a view to effect their objects and to promote justice.

History: En. Sec. 4, Pol. C. 1895; re-en. Sec. 4, Rev. C. 1907; amd. Sec. 2, Ch. 4, L. 1921; re-en. Sec. 4, R.C.M. 1921; Cal. Pol. C. Sec. 4; re-en. Sec. 4, R.C.M. 1935; R.C.M. 1947, 12-202.

1-2-104. Preference to construction favoring natural right. When a statute is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to be adopted.

History: En. Sec. 620, p. 200, L. 1877; re-en. Sec. 620, 1st Div. Rev. Stat. 1879; re-en. Sec. 638, 1st Div. Comp. Stat. 1887; re-en. Sec. 3142, C. Civ. Proc. 1895; re-en. Sec. 7883, Rev. C. 1907; re-en. Sec. 10527, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1866; re-en. Sec. 10527, R.C.M. 1935; R.C.M. 1947, 93-401-23(part).

1-2-105. General definitional rules — verb tense, gender, and number. The following rules apply in this code:

(1) The present tense includes the future as well as the present.

(2) Words used in the masculine gender include the feminine and neuter.

(3) The singular includes the plural and the plural the singular.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part).

1-2-106. Construction of words and phrases. Words and phrases used in the statutes of Montana are construed according to the context and the approved usage of the language, but technical words and phrases and such others as have acquired a peculiar and appropriate meaning in law or are defined in chapter 1, part 2, as amended, are to be construed according to such peculiar and appropriate meaning or definition.

History: En. Sec. 15, Pol. C. 1895; re-en. Sec. 15, Rev. C. 1907; amd. Sec. 3, Ch. 4, L. 1921; re-en. Sec. 15, R.C.M. 1921; Cal. Pol. C. Sec. 16; re-en. Sec. 15, R.C.M. 1935; R.C.M. 1947, 19-102.

1-2-107. Applicability of definitions. Whenever the meaning of a word or phrase is defined in any part of this code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears.

History: En. Sec. 4661, Civ. C. 1895; re-en. Sec. 6223, Rev. C. 1907; re-en. Sec. 8776, R.C.M. 1921; Field Civ. C. Sec. 2000; re-en. Sec. 8776, R.C.M. 1935; R.C.M. 1947, 12-215.

1-2-108. Reference to other titles, chapters, parts, or sections — subsequent amendments. (1) A statute which refers to a title, chapter, part, section, or subsection number without further identification or attribution is presumed, unless the context clearly indicates otherwise, to refer to a title, chapter, part, section, or subsection of the Montana Code Annotated.

(2) A specific or presumed reference to a title, chapter, part, section, or subsection of the Montana Code Annotated is presumed to be a reference to that title, chapter, part, section, or subsection as it may be amended or changed from time to time. This presumption may be overcome only by a clear showing that a subsequent amendment or change in the title, chapter,

part, section, or subsection is inconsistent with the continued purpose or meaning of the section referring to it.

History: En. Sec. 1, Ch. 4, L. 1975; amd. Sec. 1, Ch. 309, L. 1977; R.C.M. 1947, 12-216; amd. Sec. 1, Ch. 30, L. 1979.

1-2-109. When laws retroactive. No law contained in any of the statutes of Montana is retroactive unless expressly so declared.

History: En. Sec. 3, Pol. C. 1895; re-en. Sec. 3, Rev. C. 1907; amd. Sec. 1, Ch. 4, L. 1921; re-en. Sec. 3, R.C.M. 1921; Cal. Pol. C. Sec. 3; re-en. Sec. 3, R.C.M. 1935; R.C.M. 1947, 12-201.

1-2-110. All statutes subject to repeal. Any statute may be repealed at any time except when it is otherwise provided therein. Persons acting under any statute are deemed to have acted in contemplation of this power of repeal.

History: En. Sec. 294, Pol. C. 1895; re-en. Sec. 121, Rev. C. 1907; re-en. Sec. 95, R.C.M. 1921; Cal. Pol. C. Sec. 326; re-en. Sec. 95, R.C.M. 1935; R.C.M. 1947, 43-512.

1-2-111. Effect of code on special, local, and private statutes. Nothing in this code affects any of the provisions of any special, local, or private statutes; but such statutes are recognized as continuing in force notwithstanding the provisions of this code, except so far as they have been repealed or affected by subsequent laws.

History: En. Sec. 18, Pol. C. 1895; re-en. Sec. 18, Rev. C. 1907; re-en. Sec. 18, R.C.M. 1921; Cal. Pol. C. Sec. 19; re-en. Sec. 18, R.C.M. 1935; R.C.M. 1947, 12-209.

1-2-112. Statutes imposing new local government duties. (1) Any law enacted by the legislature after July 1, 1979, which requires a local government unit to perform an activity or provide a service or facility which will require the direct expenditure of additional funds must provide a specific means to finance the activity, service, or facility other than the existing authorized mill levies or the all-purpose mill levy. Any law that fails to provide a specific means to finance any service or facility other than the existing authorized mill levies or the all-purpose mill levy is not effective until specific means of financing are provided by the legislature.

(2) The legislature may fulfill the requirements of this section by providing for an increase in the existing authorized mill levies or the all-purpose mill levy, special mill levies, or remission of money by the state of Montana to local governments; however, an increase in the existing authorized mill levies or the all-purpose mill levy or any special mill levy must provide an amount necessary to finance the additional costs and if financing is provided by remission of funds by the state of Montana, the remission shall bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility.

(3) No subsequent legislation shall be considered to supersede or modify any provision of this section, whether by implication or otherwise, except to the extent that such legislation shall do so expressly.

(4) This section shall not apply to any law under which the required expenditure of additional local funds is incidental to the main purpose of the law.

History: En. 43-517, 43-518 by Secs. 1, 2, Ch. 275, L. 1974; R.C.M. 1947, 43-517, 43-518; amd. Sec. 1, Ch. 217, L. 1979.

Part 2

Effect of Legislature's Actions

1-2-201. Statutes — effective date. (1) Every statute, unless a different time is prescribed therein, takes effect on the first day of July following its passage and approval.

(2) "Passage", as used in subsection (1), means the enactment into law of a bill which has passed the legislature either with or without the approval of the governor, as provided in the constitution.

History: (1)En. Sec. 3466, C. Civ. Proc. 1895; re-en. Sec. 8074, Rev. C. 1907; amd. Sec. 1, Ch. 92, L. 1921; re-en. Sec. 90, R.C.M. 1921; Cal. Pol. C. Sec. 323; re-en. Sec. 90, R.C.M. 1935; Sec. 43-507, R.C.M. 1947; (2)En. Sec. 3467, C. Civ. Proc. 1895; re-en. Sec. 8075, Rev. C. 1907; re-en. Sec. 91, R.C.M. 1921; re-en. Sec. 91, R.C.M. 1935; amd. Sec. 20, Ch. 100, L. 1973; amd. Sec. 9, Ch. 309, L. 1977; Sec. 43-508, R.C.M. 1947; R.C.M. 1947, 43-507, 43-508; amd. Sec. 2, Ch. 119, L. 1979.

1-2-202. Joint resolutions — effective date. Every joint resolution, unless a different time is prescribed therein, takes effect from its passage.

History: En. Sec. 291, Pol. C. 1895; re-en. Sec. 118, Rev. C. 1907; re-en. Sec. 92, R.C.M. 1921; Cal. Pol. C. Sec. 324; re-en. Sec. 92, R.C.M. 1935; R.C.M. 1947, 43-509.

1-2-203. Effect of amendment of statute. Where a section or a part of a statute is amended, it is not to be considered as having been repealed and reenacted in the amended form, but the portions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment.

History: En. Sec. 292, Pol. C. 1895; re-en. Sec. 119, Rev. C. 1907; re-en. Sec. 93, R.C.M. 1921; Cal. Pol. C. Sec. 325; re-en. Sec. 93, R.C.M. 1935; R.C.M. 1947, 43-510.

1-2-204. Amendment of repealed act void. An act amending a section of an act repealed is void.

History: En. Sec. 297, Pol. C. 1895; re-en. Sec. 124, Rev. C. 1907; re-en. Sec. 98, R.C.M. 1921; Cal. Pol. C. Sec. 330; re-en. Sec. 98, R.C.M. 1935; R.C.M. 1947, 43-515.

1-2-205. Repeal of law creating criminal offense. The repeal of any law creating a criminal offense does not constitute a bar to an indictment or information and the punishment of an act already committed in violation of the law so repealed unless the intention to bar such indictment or information and punishment is expressly declared in the repealing act.

History: En. Sec. 8, p. 390, Cod. Stat. 1871; re-en. Sec. 152, 5th Div. Rev. Stat. 1879; re-en. Sec. 209, 5th Div. Comp. Stat. 1887; amd. Sec. 296, Pol. C. 1895; re-en. Sec. 123, Rev. C. 1907; re-en. Sec. 97, R.C.M. 1921; Cal. Pol. C. Sec. 329; re-en. Sec. 97, R.C.M. 1935; R.C.M. 1947, 43-514.

1-2-206. Repeal of repealed statute. The repeal of any statute or part of a statute heretofore repealed must not be so construed as a declaration, express or by implication, that such statute or part of a statute has been in force at any time subsequent to such first repeal.

History: En. Sec. 5180, Pol. C. 1895; re-en. Sec. 3560, Rev. C. 1907; re-en. Sec. 5526, R.C.M. 1921; Cal. Pol. C. Sec. 4504; re-en. Sec. 5526, R.C.M. 1935; R.C.M. 1947, 12-213.

1-2-207. Repeal of repealing act — no revival. No act or part of an act repealed by another act of the legislature is revived by the repeal of the repealing act without express words reviving such repealed act or part of an act.

History: En. Sec. 2, p. 390, Cod. Stat. 1871; re-en. Sec. 146, 5th Div. Rev. Stat. 1879; re-en. Sec. 203, 5th Div. Comp. Stat. 1887; amd. Sec. 295, Pol. C. 1895; re-en. Sec. 122, Rev. C. 1907; re-en. Sec. 96, R.C.M. 1921; Cal. Pol. C. Sec. 328; re-en. Sec. 96, R.C.M. 1935; R.C.M. 1947, 43-513.

CHAPTER 3

MAXIMS OF JURISPRUDENCE

Part 1 — General Provisions

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Part 1

General Provisions

1-3-101. Purpose of maxims. The maxims of jurisprudence set forth in part 2 of this chapter are intended not to qualify any of the other provisions of this code but to aid in their just application.

History: En. Sec. 4600, Civ. C. 1895; re-en. Sec. 6177, Rev. C. 1907; re-en. Sec. 8738, R.C.M. 1921; Cal. Civ. C. Sec. 3509; Field Civ. C. Sec. 1964; re-en. Sec. 8738, R.C.M. 1935; R.C.M. 1947, 49-101.

Part 2

Text of Maxims

1-3-201. Obsolete reason, obsolete rule. When the reason of a rule ceases, so should the rule itself.

History: En. Sec. 4601, Civ. C. 1895; re-en. Sec. 6178, Rev. C. 1907; re-en. Sec. 8739, R.C.M. 1921; Cal. Civ. C. Sec. 3510; Field Civ. C. Sec. 1965; re-en. Sec. 8739, R.C.M. 1935; R.C.M. 1947, 49-102.

1-3-202. Same reason, same rule. Where the reason is the same, the rule should be the same.

History: En. Sec. 4602, Civ. C. 1895; re-en. Sec. 6179, Rev. C. 1907; re-en. Sec. 8740, R.C.M. 1921; Cal. Civ. C. Sec. 3511; Field Civ. C. Sec. 1966; re-en. Sec. 8740, R.C.M. 1935; R.C.M. 1947, 49-103.

1-3-203. Change in purpose. One must not change his purpose to the injury of another.

History: En. Sec. 4603, Civ. C. 1895; re-en. Sec. 6180, Rev. C. 1907; re-en. Sec. 8741, R.C.M. 1921; Cal. Civ. C. Sec. 3512; Field Civ. C. Sec. 1967; re-en. Sec. 8741, R.C.M. 1935; R.C.M. 1947, 49-104.

1-3-204. Waiver of benefit of a law. Anyone may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

History: En. Sec. 4604, Civ. C. 1895; re-en. Sec. 6181, Rev. C. 1907; re-en. Sec. 8742, R.C.M. 1921; Cal. Civ. C. Sec. 3513; Field Civ. C. Sec. 1968; re-en. Sec. 8742, R.C.M. 1935; R.C.M. 1947, 49-105.

1-3-205. Limit on rights. One must so use his own rights as not to infringe upon the rights of another.

History: En. Sec. 4605, Civ. C. 1895; re-en. Sec. 6182, Rev. C. 1907; re-en. Sec. 8743, R.C.M. 1921; Cal. Civ. C. Sec. 3514; Field Civ. C. Sec. 1969; re-en. Sec. 8743, R.C.M. 1935; R.C.M. 1947, 49-106.

1-3-206. Consent. He who consents to an act is not wronged by it.

History: En. Sec. 4606, Civ. C. 1895; re-en. Sec. 6183, Rev. C. 1907; re-en. Sec. 8744, R.C.M. 1921; Cal. Civ. C. Sec. 3515; Field Civ. C. Sec. 1970; re-en. Sec. 8744, R.C.M. 1935; R.C.M. 1947, 49-107.

1-3-207. Acquiescence. Acquiescence in error takes away the right of objecting to it.

History: En. Sec. 4607, Civ. C. 1895; re-en. Sec. 6184, Rev. C. 1907; re-en. Sec. 8745, R.C.M. 1921; Cal. Civ. C. Sec. 3516; Field Civ. C. Sec. 1971; re-en. Sec. 8745, R.C.M. 1935; R.C.M. 1947, 49-108.

1-3-208. Own wrong — no advantage. No one can take advantage of his own wrong.

History: En. Sec. 4608; Civ. C. 1895; re-en. Sec. 6185, Rev. C. 1907; re-en. Sec. 8746, R.C.M. 1921; Cal. Civ. C. Sec. 3517; Field Civ. C. Sec. 1972; re-en. Sec. 8746, R.C.M. 1935; R.C.M. 1947, 49-109.

1-3-209. Fraudulent dispossession. He who has fraudulently dispossessed himself of a thing may be treated as if he still had possession.

History: En. Sec. 4609, Civ. C. 1895; re-en. Sec. 6186, Rev. C. 1907; re-en. Sec. 8747, R.C.M. 1921; Cal. Civ. C. Sec. 3518; Field Civ. C. Sec. 1973; re-en. Sec. 8747, R.C.M. 1935; R.C.M. 1947, 49-110.

1-3-210. Acts on one's behalf. He who can and does not forbid that which is done on his behalf is deemed to have bidden it.

History: En. Sec. 4610, Civ. C. 1895; re-en. Sec. 6187, Rev. C. 1907; re-en. Sec. 8748, R.C.M. 1921; Cal. Civ. C. Sec. 3519; Field Civ. C. Sec. 1974; re-en. Sec. 8748, R.C.M. 1935; R.C.M. 1947, 49-111.

1-3-211. Acts of others. No one should suffer for the act of another.

History: En. Sec. 4611, Civ. C. 1895; re-en. Sec. 6188, Rev. C. 1907; re-en. Sec. 8749, R.C.M. 1921; Cal. Civ. C. Sec. 3520; Field Civ. C. Sec. 1975; re-en. Sec. 8749, R.C.M. 1935; R.C.M. 1947, 49-112.

1-3-212. Benefit — burden. He who takes the benefit must bear the burden.

History: En. Sec. 4612, Civ. C. 1895; re-en. Sec. 6189, Rev. C. 1907; re-en. Sec. 8750, R.C.M. 1921; Cal. Civ. C. Sec. 3521; Field Civ. C. Sec. 1976; re-en. Sec. 8750, R.C.M. 1935; R.C.M. 1947, 49-113.

1-3-213. Grant includes essentials. One who grants a thing is presumed to grant also whatever is essential to its use.

History: En. Sec. 4613, Civ. C. 1895; re-en. Sec. 6190, Rev. C. 1907; re-en. Sec. 8751, R.C.M. 1921; Cal. Civ. C. Sec. 3522; Field Civ. C. Sec. 1977; re-en. Sec. 8751, R.C.M. 1935; R.C.M. 1947, 49-114.

1-3-214. Wrong — remedy. For every wrong there is a remedy.

History: En. Sec. 4614, Civ. C. 1895; re-en. Sec. 6191, Rev. C. 1907; re-en. Sec. 8752, R.C.M. 1921; Cal. Civ. C. Sec. 3523; Field Civ. C. Sec. 1978; re-en. Sec. 8752, R.C.M. 1935; R.C.M. 1947, 49-115.

1-3-215. Equal in right or wrong. Between those who are equally in the right or equally in the wrong, the law does not interpose.

History: En. Sec. 4615, Civ. C. 1895; re-en. Sec. 6192, Rev. C. 1907; re-en. Sec. 8753, R.C.M. 1921; Cal. Civ. C. Sec. 3524; Field Civ. C. Sec. 1979; re-en. Sec. 8753, R.C.M. 1935; R.C.M. 1947, 49-116.

1-3-216. Preference to earliest. Between rights otherwise equal, the earliest is preferred.

History: En. Sec. 4616, Civ. C. 1895; re-en. Sec. 6193, Rev. C. 1907; re-en. Sec. 8754, R.C.M. 1921; Cal. Civ. C. Sec. 3525; Field Civ. C. Sec. 1980; re-en. Sec. 8754, R.C.M. 1935; R.C.M. 1947, 49-117.

1-3-217. Beyond man's control. No man is responsible for that which no man can control.

History: En. Sec. 4617, Civ. C. 1895; re-en. Sec. 6194, Rev. C. 1907; re-en. Sec. 8755, R.C.M. 1921; Cal. Civ. C. Sec. 3526; Field Civ. C. Sec. 1981; re-en. Sec. 8755, R.C.M. 1935; R.C.M. 1947, 49-118.

1-3-218. Vigilance. The law helps the vigilant before those who sleep on their rights.

History: En. Sec. 4618, Civ. C. 1895; re-en. Sec. 6195, Rev. C. 1907; re-en. Sec. 8756, R.C.M. 1921; Cal. Civ. C. Sec. 3527; Field Civ. C. Sec. 1982; re-en. Sec. 8756, R.C.M. 1935; R.C.M. 1947, 49-119.

1-3-219. Form and substance. The law respects form less than substance.

History: En. Sec. 4619, Civ. C. 1895; re-en. Sec. 6196, Rev. C. 1907; re-en. Sec. 8757, R.C.M. 1921; Cal. Civ. C. Sec. 3528; Field Civ. C. Sec. 1983; re-en. Sec. 8757, R.C.M. 1935; R.C.M. 1947, 49-120.

1-3-220. What ought to have been done. That which ought to have been done is to be regarded as done, in favor of him to whom and against him from whom performance is due.

History: En. Sec. 4620, Civ. C. 1895; re-en. Sec. 6197, Rev. C. 1907; re-en. Sec. 8758, R.C.M. 1921; Cal. Civ. C. Sec. 3529; Field Civ. C. Sec. 1984; re-en. Sec. 8758, R.C.M. 1935; R.C.M. 1947, 49-121.

1-3-221. Apparent nonexistence. That which does not appear to exist is to be regarded as if it did not exist.

History: En. Sec. 4621, Civ. C. 1895; re-en. Sec. 6198, Rev. C. 1907; re-en. Sec. 8759, R.C.M. 1921; Cal. Civ. C. Sec. 3530; Field Civ. C. Sec. 1985; re-en. Sec. 8759, R.C.M. 1935; R.C.M. 1947, 49-122.

1-3-222. Impossibilities. The law never requires impossibilities.

History: En. Sec. 4622, Civ. C. 1895; re-en. Sec. 6199, Rev. C. 1907; re-en. Sec. 8760, R.C.M. 1921; Cal. Civ. C. Sec. 3531; Field Civ. C. Sec. 1986; re-en. Sec. 8760, R.C.M. 1935; R.C.M. 1947, 49-123.

1-3-223. Idle acts. The law neither does nor requires idle acts.

History: En. Sec. 4623, Civ. C. 1895; re-en. Sec. 6200, Rev. C. 1907; re-en. Sec. 8761, R.C.M. 1921; Cal. Civ. C. Sec. 3532; Field Civ. C. Sec. 1987; re-en. Sec. 8761, R.C.M. 1935; R.C.M. 1947, 49-124.

1-3-224. Trifles. The law disregards trifles.

History: En. Sec. 4624, Civ. C. 1895; re-en. Sec. 6201, Rev. C. 1907; re-en. Sec. 8762, R.C.M. 1921; Cal. Civ. C. Sec. 3533; Field Civ. C. Sec. 1988; re-en. Sec. 8762, R.C.M. 1935; R.C.M. 1947, 49-125.

1-3-225. Particular versus general. Particular expressions qualify those which are general.

History: En. Sec. 4625, Civ. C. 1895; re-en. Sec. 6202, Rev. C. 1907; re-en. Sec. 8763, R.C.M. 1921; Cal. Civ. C. Sec. 3534; Field Civ. C. Sec. 1989; re-en. Sec. 8763, R.C.M. 1935; R.C.M. 1947, 49-126.

1-3-226. Preference for contemporaneity. Contemporaneous exposition is in general the best.

History: En. Sec. 4626, Civ. C. 1895; re-en. Sec. 6203, Rev. C. 1907; re-en. Sec. 8764, R.C.M. 1921; Cal. Civ. C. Sec. 3535; Field Civ. C. Sec. 1990; re-en. Sec. 8764, R.C.M. 1935; R.C.M. 1947, 49-127.

1-3-227. Smaller within larger. The greater contains the less.

History: En. Sec. 4627, Civ. C. 1895; re-en. Sec. 6204, Rev. C. 1907; re-en. Sec. 8765, R.C.M. 1921; Cal. Civ. C. Sec. 3536; Field Civ. C. Sec. 1991; re-en. Sec. 8765, R.C.M. 1935; R.C.M. 1947, 49-128.

1-3-228. Superfluity. Superfluity does not vitiate.

History: En. Sec. 4628, Civ. C. 1895; re-en. Sec. 6205, Rev. C. 1907; re-en. Sec. 8766, R.C.M. 1921; Cal. Civ. C. Sec. 3537; Field Civ. C. Sec. 1992; re-en. Sec. 8766, R.C.M. 1935; R.C.M. 1947, 49-129.

1-3-229. Certainty. That is certain which can be made certain.

History: En. Sec. 4629, Civ. C. 1895; re-en. Sec. 6206, Rev. C. 1907; re-en. Sec. 8767, R.C.M. 1921; Cal. Civ. C. Sec. 3538; Field Civ. C. Sec. 1993; re-en. Sec. 8767, R.C.M. 1935; R.C.M. 1947, 49-130.

1-3-230. Void act. Time does not confirm a void act.

History: En. Sec. 4630, Civ. C. 1895; re-en. Sec. 6207, Rev. C. 1907; re-en. Sec. 8768, R.C.M. 1921; Cal. Civ. C. Sec. 3539; Field Civ. C. Sec. 1994; re-en. Sec. 8768, R.C.M. 1935; R.C.M. 1947, 49-131.

1-3-231. Principal. The incident follows the principal and not the principal the incident.

History: En. Sec. 4631, Civ. C. 1895; re-en. Sec. 6208, Rev. C. 1907; re-en. Sec. 8769, R.C.M. 1921; Cal. Civ. C. Sec. 3540; Field Civ. C. Sec. 1995; re-en. Sec. 8769, R.C.M. 1935; R.C.M. 1947, 49-132.

1-3-232. Avoiding voidness. An interpretation which gives effect is preferred to one which makes void.

History: En. Sec. 4632, Civ. C. 1895; re-en. Sec. 6209, Rev. C. 1907; re-en. Sec. 8770, R.C.M. 1921; Cal. Civ. C. Sec. 3541; Field Civ. C. Sec. 1996; re-en. Sec. 8770, R.C.M. 1935; R.C.M. 1947, 49-133.

1-3-233. Reasonableness. Interpretation must be reasonable.

History: En. Sec. 4633, Civ. C. 1895; re-en. Sec. 6210, Rev. C. 1907; re-en. Sec. 8771, R.C.M. 1921; Cal. Civ. C. Sec. 3542; Field Civ. C. Sec. 1997; re-en. Sec. 8771, R.C.M. 1935; R.C.M. 1947, 49-134.

1-3-234. Third parties — who suffers. Where one of two innocent persons must suffer by the act of a third, he by whose negligence it happened must be the sufferer.

History: En. Sec. 4634, Civ. C. 1895; re-en. Sec. 6211, Rev. C. 1907; re-en. Sec. 8772, R.C.M. 1921; Cal. Civ. C. Sec. 3543; Field Civ. C. Sec. 1998; re-en. Sec. 8772, R.C.M. 1935; R.C.M. 1947, 49-135.

CHAPTER 4

INTERPRETATION OF INSTRUMENTS

Part 1 — General Provisions

Section
1-4-101. Role of the judge — preference to construction giving each provision meaning.
1-4-102. Consideration of circumstances surrounding execution.
1-4-103. Intention of the parties — particular and general provisions.
1-4-104. Preference to construction favoring natural right.
1-4-105. Written words versus words in printed form.
1-4-106. Interpretation of language according to usage in place of execution.
1-4-107. Construction of terms.
1-4-108. Construction of the terms of a notice.
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Part 2 — Seals

1-4-201. Seal defined.
1-4-202. Manner of making a seal.
1-4-203. Acceptance of foreign seals.
1-4-204. Distinctions between sealed and unsealed abolished.
1-4-205. Effect of instruments without a seal.
1-4-206. Change in writing under seal by unsealed writing.
1-4-207. Compromise or settlement of a debt by unsealed writing.

Part 1

General Provisions

1-4-101. Role of the judge — preference to construction giving each provision meaning. In the construction of an instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

History: En. Sec. 612, p. 198, L. 1877; re-en. Sec. 612, 1st Div. Rev. Stat. 1879; re-en. Sec. 630, 1st Div. Comp. Stat. 1887; re-en. Sec. 3134, C. Civ. Proc. 1895; re-en. Sec. 7875, Rev. C. 1907; re-en. Sec. 10519, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1858; re-en. Sec. 10519, R.C.M. 1935; R.C.M. 1947, 93-401-15(part).

1-4-102. Consideration of circumstances surrounding execution. For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject of the instrument and of the parties to it, may also be shown so that the judge be placed in the position of those whose language he is to interpret.

History: En. Sec. 614, p. 199, L. 1877; re-en. Sec. 614, 1st Div. Rev. Stat. 1879; re-en. Sec. 632, 1st Div. Comp. Stat. 1887; re-en. Sec. 3136, C. Civ. Proc. 1895; re-en. Sec. 7877, Rev. C. 1907; re-en. Sec. 10521, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1860; re-en. Sec. 10521, R.C.M. 1935; R.C.M. 1947, 93-401-17.

1-4-103. Intention of the parties — particular and general provisions. In the construction of an instrument, the intention of the parties is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former so a particular intent will control a general one that is inconsistent with it.

History: En. Sec. 613, p. 198, L. 1877; re-en. Sec. 613, 1st Div. Rev. Stat. 1879; re-en. Sec. 631, 1st Div. Comp. Stat. 1887; re-en. Sec. 3135, C. Civ. Proc. 1895; re-en. Sec. 7876, Rev. C. 1907; re-en. Sec. 10520, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1859; re-en. Sec. 10520, R.C.M. 1935; R.C.M. 1947, 93-401-16(part).

1-4-104. Preference to construction favoring natural right. When an instrument is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to be adopted.

History: En. Sec. 620, p. 200, L. 1877; re-en. Sec. 620, 1st Div. Rev. Stat. 1879; re-en. Sec. 638, 1st Div. Comp. Stat. 1887; re-en. Sec. 3142, C. Civ. Proc. 1895; re-en. Sec. 7883, Rev. C. 1907; re-en. Sec. 10527, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1866; re-en. Sec. 10527, R.C.M. 1935; R.C.M. 1947, 93-401-23(part).

1-4-105. Written words versus words in printed form. When an instrument consists partly of written words and partly of a printed form and the two are inconsistent, the former control the latter.

History: En. Sec. 616, p. 199, L. 1877; re-en. Sec. 616, 1st Div. Rev. Stat. 1879; re-en. Sec. 634, 1st Div. Comp. Stat. 1887; re-en. Sec. 3138, C. Civ. Proc. 1895; re-en. Sec. 7879, Rev. C. 1907; re-en. Sec. 10523, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1862; re-en. Sec. 10523, R.C.M. 1935; R.C.M. 1947, 93-401-19.

1-4-106. Interpretation of language according to usage in place of execution. The language of a writing is to be interpreted according to the meaning it bears in the place of its execution unless the parties have reference to a different place.

History: En. Sec. 611, p. 198, L. 1877; re-en. Sec. 611, 1st Div. Rev. Stat. 1879; re-en. Sec. 629, 1st Div. Comp. Stat. 1887; re-en. Sec. 3133, C. Civ. Proc. 1895; re-en. Sec. 7874, Rev. C. 1907; re-en. Sec. 10518, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1857; re-en. Sec. 10518, R.C.M. 1935; R.C.M. 1947, 93-401-14.

1-4-107. Construction of terms. The terms of a writing are presumed to have been used in their primary and general acceptation, but evidence is nevertheless admissible that they have a local, technical, or otherwise peculiar signification and were so used and understood in the particular instance, in which case the agreement must be construed accordingly.

History: En. Sec. 615, p. 199, L. 1877; re-en. Sec. 615, 1st Div. Rev. Stat. 1879; re-en. Sec. 633, 1st Div. Comp. Stat. 1887; re-en. Sec. 3137, C. Civ. Proc. 1895; re-en. Sec. 7878, Rev. C. 1907; re-en. Sec. 10522, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1861; re-en. Sec. 10522, R.C.M. 1935; R.C.M. 1947, 93-401-18.

1-4-108. Construction of the terms of a notice. A written notice, as well as every other writing, is to be construed according to the ordinary acceptation of its terms. Thus, a notice to the drawers or endorsers of a draft or promissory note that it has been protested for want of acceptance or payment must be held to import that any necessary presentment for acceptance or payment has been made, that the instrument has been dishonored, and that the holder looks for payment to the person to whom the notice is given.

History: En. Sec. 619, p. 200, L. 1877; re-en. Sec. 619, 1st Div. Rev. Stat. 1879; re-en. Sec. 637, 1st Div. Comp. Stat. 1887; re-en. Sec. 3141, C. Civ. Proc. 1895; re-en. Sec. 7882, Rev. C. 1907; re-en. Sec. 10526, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1865; re-en. Sec. 10526, R.C.M. 1935; amd. Sec. 11-170, Ch. 264, L. 1963; R.C.M. 1947, 93-401-22.

1-4-109. Usage admissible to clarify. In conformity with the rules of evidence, upon a trial evidence may be given of usage to explain the true character of an instrument where such true character is not otherwise plain, but usage is never admissible except as an instrument of interpretation.

History: En. Sec. 624, p. 201, L. 1877; re-en. Sec. 624, 1st Div. Rev. Stat. 1879; re-en. Sec. 642, 1st Div. Comp. Stat. 1887; re-en. Sec. 3146, C. Civ. Proc. 1895; re-en. Sec. 7887, Rev. C. 1907; re-en. Sec. 10531, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1870; re-en. Sec. 10531, R.C.M. 1935; R.C.M. 1947, 93-401-27(part).

Part 2

Seals

1-4-201. Seal defined. (1) A "seal" is a particular sign made to attest in the most formal manner the execution of an instrument.

(2) A public seal in this state is a stamp or impression made by a public officer with an instrument provided by law to attest the execution of an official or public document. A private seal may be made in the same manner by any instrument.

History: (1)En. Sec. 3221, C. Civ. Proc. 1895; re-en. Sec. 7934, Rev. C. 1907; re-en. Sec. 10578, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1930; re-en. Sec. 10578, R.C.M. 1935; Sec. 93-1101-2, R.C.M. 1947; (2)En. Sec. 3222, C. Civ. Proc. 1895; re-en. Sec. 7935, Rev. C. 1907; re-en. Sec. 10579, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1931; re-en. Sec. 10579, R.C.M. 1935; Sec. 93-1101-3, R.C.M. 1947; R.C.M. 1947, 93-1101-2, 93-1101-3(part).

1-4-202. Manner of making a seal. "Seal", when the seal of a court or public officer is required by law to be affixed to any instrument, includes an impression of the seal upon the paper, or other material on which such instrument is written, alone or upon any substance attached to the paper or other material capable of receiving a visible impression. The seal of a private person may be made in like manner, by the scroll of a pen, or by writing the word "seal" against the signature of the writer.

History: Ap. p. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25,

L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; Ap. p. Sec. 2189, Civ. C. 1895; re-en. Sec. 5021, Rev. C. 1907; re-en. Sec. 7523, R.C.M. 1921; Cal. Civ. C. Sec. 1628; Based on Field Civ. C. Sec. 798; re-en. Sec. 7523, R.C.M. 1935; Sec. 13-610, R.C.M. 1947; Ap. p. Sec. 3222, C. Civ. Proc. 1895; re-en. Sec. 7935, Rev. C. 1907; re-en. Sec. 10579, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1931; re-en. Sec. 10579, R.C.M. 1935; Sec. 93-1101-3, R.C.M. 1947 R.C.M. 1947, 13-610, 19-103(25), 93-1101-3(part).

1-4-203. Acceptance of foreign seals. A scroll or other sign made in a sister state or foreign country and there recognized as a seal must be so regarded in this state.

History: En. Sec. 3222, C. Civ. Proc. 1895; re-en. Sec. 7935, Rev. C. 1907; re-en. Sec. 10579, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1931; re-en. Sec. 10579, R.C.M. 1935; R.C.M. 1947, 93-1101-3(part).

1-4-204. Distinctions between sealed and unsealed abolished. All distinctions between sealed and unsealed instruments are abolished.

History: En. Sec. 2190, Civ. C. 1895; re-en. Sec. 5022, Rev. C. 1907; re-en. Sec. 7524, R.C.M. 1921; Cal. Civ. C. Sec. 1629; re-en. Sec. 7524, R.C.M. 1935; R.C.M. 1947, 13-611.

1-4-205. Effect of instruments without a seal. All instruments shall be as effectual without a seal as if the same had a seal attached thereto, but this section shall not apply to municipal or other corporations which by law are required to attest their action under seal.

History: En. Sec. 2191, Civ. C. 1895; re-en. Sec. 5023, Rev. C. 1907; re-en. Sec. 7525, R.C.M. 1921; re-en. Sec. 7525, R.C.M. 1935; R.C.M. 1947, 13-612.

1-4-206. Change in writing under seal by unsealed writing. There must be no difference in this state between sealed and unsealed writings. A writing under seal may therefore be changed or altogether discharged by a writing not under seal.

History: En. Sec. 3223, C. Civ. Proc. 1895; re-en. Sec. 7936, Rev. C. 1907; re-en. Sec. 10580, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1932; re-en. Sec. 10580, R.C.M. 1935; R.C.M. 1947, 93-1101-4.

1-4-207. Compromise or settlement of a debt by unsealed writing. An agreement in writing without a seal for the compromise or settlement of a debt is as obligatory as if a seal were affixed.

History: En. Sec. 3225, C. Civ. Proc. 1895; re-en. Sec. 7938, Rev. C. 1907; re-en. Sec. 10582, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1934; re-en. Sec. 10582, R.C.M. 1935; R.C.M. 1947, 93-1101-6.

CHAPTER 5

PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS NOTARIES PUBLIC

Part 1 — General Provisions—Proof and Acknowledgment

Section

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Sec. 14, Ch. 119, L. 1979)

Part 1

General Provisions — Proof and Acknowledgment

1-5-101. By whom and where acknowledgments may be taken. (1) The proof of acknowledgment of an instrument may be made at any place within this state before a justice or clerk of the supreme court or a judge of the district court.

(2) The proof of acknowledgment of an instrument may be made in this state within the city, county, or district for which the officer was elected or appointed, before either:

(a) a clerk of a court of record;
(b) a county clerk;
(c) a notary public;
(d) a justice of the peace; or
(e) a United States commissioner.

History: (1)En. Sec. 1600, Civ. C. 1895; re-en. Sec. 4654, Rev. C. 1907; re-en. Sec. 6905, R.C.M. 1921; Cal. Civ. C. Sec. 1180; Based on Field Civ. C. Sec. 516; re-en. Sec. 6905, R.C.M. 1935; Sec. 39-101, R.C.M. 1947; (2)En. Sec. 1601, Civ. C. 1895; re-en. Sec. 4655, Rev. C. 1907; amd. Sec. 1, Ch. 10, L. 1913; re-en. Sec. 6906, R.C.M. 1921; Cal. Civ. C. Sec. 1181; Based on Field Civ. C. Sec. 517; re-en. Sec. 6906, R.C.M. 1935; Sec. 39-102, R.C.M. 1947; R.C.M. 1947, 39-101, 39-102.

1-5-102. Acknowledgments taken outside this state. The proof of acknowledgment of an instrument may be made outside this state but within the United States and within the jurisdiction of the officer, before:

(1) a justice, judge, or clerk of any court of record of the United States;

(2) a justice, judge, or clerk of any court of record of any state or territory;

(3) a notary public; or

(4) any other officer of the state or territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment.

History: En. Sec. 1602, Civ. C. 1895; re-en. Sec. 4656, Rev. C. 1907; re-en. Sec. 6907, R.C.M. 1921; Cal. Civ. C. Sec. 1182; Based on Field Civ. C. Sec. 518; re-en. Sec. 6907, R.C.M. 1935; R.C.M. 1947, 39-103; amd. Sec. 3, Ch. 119, L. 1979.

1-5-103. Proofs and acknowledgments taken outside the United States. The proof or acknowledgment of an instrument may be made without the United States before either:

(1) a minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made;

(2) a consul, vice consul, or consular agent of the United States, resident in the country where the proof or acknowledgment is made;

(3) a judge of a court of record of the country where the proof or acknowledgment is made;

(4) commissioners appointed for such purposes by the governor of the state pursuant to special statutes; or

(5) a notary public.

History: En. Sec. 1603, Civ. C. 1895; re-en. Sec. 4657, Rev. C. 1907; re-en. Sec. 6908, R.C.M. 1921; Cal. Civ. C. Sec. 1183; re-en. Sec. 6908, R.C.M. 1935; R.C.M. 1947, 39-104.

1-5-104. Proofs and acknowledgments by deputy officers. When any of the officers mentioned in 1-5-101 through 1-5-103 are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy in the name of his principal.

History: En. Sec. 1604, Civ. C. 1895; re-en. Sec. 4658, Rev. C. 1907; re-en. Sec. 6909, R.C.M. 1921; Cal. Civ. C. Sec. 1184; re-en. Sec. 6909, R.C.M. 1935; R.C.M. 1947, 39-105.

1-5-105. Notarial acts by officers in the armed services. (1) In addition to the acknowledgment of instruments and the performance of other notarial acts in the manner and form otherwise authorized by law, instruments may be acknowledged, documents attested, oaths and affirmations administered, depositions and affidavits executed, and other notarial acts performed before or by any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army or marine corps, with the rank of ensign or higher in the navy or coast guard, or with equivalent rank in any other component part of the armed forces of the United States, at the request of any person who:

(a) is a member of the armed forces of the United States;

(b) is serving as a merchant seaman outside the limits of the continental United States, excluding Alaska; or

(c) is outside the limits of the United States of America by permission, assignment, or direction of any department or official of the United States government in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged.

(2) Such acknowledgment of instruments, attestation of documents, administration of oaths and affirmations, execution of depositions and affidavits, and performance of other notarial acts, heretofore or hereafter made or taken, are valid and binding; and instruments and documents so acknowledged, authenticated, or sworn to are admissible in evidence and eligible to be recorded in this state under the same circumstances and with the same effect as if such acknowledgment, attestation, oath, affirmation, deposition, affidavit, or other notarial act had been made or taken within this state before or by a duly qualified officer or official as otherwise provided by law.

(3) In the taking of acknowledgments and the performing of other notarial acts requiring certification, a certificate endorsed upon or attached to the instrument which shows the date of the notarial act and which states, in substance, that the person appearing before the officer acknowledged the instrument as his act or made or signed the instrument under oath is sufficient for all purposes. The instrument is not rendered invalid by the failure to state the place of execution or acknowledgment.

(4) The signature, rank, and branch of service or subdivision thereof of any such commissioned officer must appear upon the instrument or certificate, and no further proof of the authority of the officer to so act is required. Such action by the commissioned officer is prima facie evidence that the person making the oath or acknowledgment is within the purview of this section.

History: En. Sec. 1, Ch. 117, L. 1945; R.C.M. 1947, 39-106; amd. Sec. 4, Ch. 119, L. 1979.

1-5-106. Officers to authenticate certificate. Officers taking and certifying acknowledgments or proof of instruments for record must authenticate their certificates by affixing their signatures, followed by the names of their offices, also their seals of office if, by the laws of the state or country where the acknowledgment or proof is taken or by authority of which they are acting, they are required to have official seals.

History: En. Sec. 1613, Civ. C. 1895; re-en. Sec. 4667, Rev. C. 1907; re-en. Sec. 6918, R.C.M. 1921; Cal. Civ. C. Sec. 1193; re-en. Sec. 6918, R.C.M. 1935; R.C.M. 1947, 39-115.

1-5-107. Certificate of clerk authenticating justice of the peace's certificate. The certificate of proof or acknowledgment, if made before a justice of the peace, when used in any county other than that in which he resides, must be accompanied by a certificate under the hand and seal of the clerk of the county in which the justice resides, setting forth that such justice, at the time of making such proof or acknowledgment, was authorized to take the same and that the clerk is acquainted with his handwriting and believes that the signature to the original certificate is genuine.

History: En. Sec. 1614, Civ. C. 1895; re-en. Sec. 4668, Rev. C. 1907; re-en. Sec. 6919, R.C.M. 1921; Cal. Civ. C. Sec. 1194; re-en. Sec. 6919, R.C.M. 1935; R.C.M. 1947, 39-116.

1-5-108. Action to correct defective certificate. When the acknowledgment or proof of the execution of an instrument is properly made but defectively certified, any party interested may have an action in the district court to obtain a judgment correcting the certificate.

History: En. Sec. 1622, Civ. C. 1895; re-en. Sec. 4676, Rev. C. 1907; re-en. Sec. 6927, R.C.M. 1921; Cal. Civ. C. Sec. 1202; re-en. Sec. 6927, R.C.M. 1935; R.C.M. 1947, 39-124.

1-5-109. Action for judgment proving an instrument. Any person interested under an instrument entitled to be proved for record may institute an action in the district court against the proper parties to obtain a judgment proving such instrument.

History: En. Sec. 1623, Civ. C. 1895; re-en. Sec. 4677, Rev. C. 1907; re-en. Sec. 6928, R.C.M. 1921; Cal. Civ. C. Sec. 1203; re-en. Sec. 6928, R.C.M. 1935; R.C.M. 1947, 39-125.

1-5-110. Effect of judgment correcting defect or proving instrument. A certified copy of the judgment in a proceeding instituted under 1-5-108 or 1-5-109 showing the proof of the instrument and attached thereto entitles such instrument to record with the like effect as if acknowledged.

History: En. Sec. 1624, Civ. C. 1895; re-en. Sec. 4678, Rev. C. 1907; re-en. Sec. 6929, R.C.M. 1921; Cal. Civ. C. Sec. 1204; re-en. Sec. 6929, R.C.M. 1935; R.C.M. 1947, 39-126.

Part 2

Acknowledgment

1-5-201. Requirement that officer have evidence of authority of person making acknowledgment. The acknowledgment of an instrument must not be taken unless the officer taking it knows or has satisfactory evidence that the person making such acknowledgment is the individual who is described in and who executed the instrument or, if executed by a corporation, that the person making such acknowledgment is the president, vice-president, secretary, or assistant secretary of such corporation or other person duly authorized by resolution of such corporation, who executed it on its behalf.

History: En. Sec. 1605, Civ. C. 1895; re-en. Sec. 4659, Rev. C. 1907; amd. Sec. 1, Ch. 2, L. 1913; re-en. Sec. 6910, R.C.M. 1921; Cal. Civ. C. Sec. 1185; re-en. Sec. 6910, R.C.M. 1935; amd. Sec. 1, Ch. 171, L. 1937; amd. Sec. 1, Ch. 12, L. 1974; R.C.M. 1947, 39-107.

1-5-202. Officer to certify acknowledgment. An officer taking the acknowledgment of an instrument must endorse thereon or attach thereto a certificate substantially in the forms prescribed in this part.

History: En. Sec. 1608, Civ. C. 1895; re-en. Sec. 4662, Rev. C. 1907; re-en. Sec. 6913, R.C.M. 1921; Cal. Civ. C. Sec. 1188; re-en. Sec. 6913, R.C.M. 1935; R.C.M. 1947, 39-110.

1-5-203. General form of certificate of acknowledgment. The certificate of acknowledgment, unless it is otherwise in this part provided, must be substantially in the following form:

State of ....
County of ....

On this .... day of .... in the year ...., before me (here insert the name and quality of the officer), personally appeared ...., known to me (or proved to me on the oath of ....) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (she or they) executed the same.

History: En. Sec. 1609, Civ. C. 1895; re-en. Sec. 4663, Rev. C. 1907; re-en. Sec. 6914, R.C.M. 1921; Cal. Civ. C. Sec. 1189; re-en. Sec. 6914, R.C.M. 1935; R.C.M. 1947, 39-111.

1-5-204. Form of certificate of acknowledgment by corporation. The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

State of ....
County of ....

On this .... day of .... in the year ...., before me (here insert the name and quality of the officer), personally appeared ...., known to me (or proved to me on the oath of ....) to be the president (or vice-president, secretary, or assistant secretary) of the corporation that executed the within instrument [where, however, the instrument is executed in behalf of the corporation by someone other than the president, vice-president, secretary, or assistant secretary, insert: known to me (or proved to me on the oath of ....) to be the person who executed the within instrument on behalf of the corporation therein named], and acknowledged to me that such corporation executed the same.

History: En. Sec. 1612, Civ. C. 1895; re-en. Sec. 4664, Rev. C. 1907; amd. Sec. 1, Ch. 3, L. 1913; re-en. Sec. 6915, R.C.M. 1921; Cal. Civ. C. Sec. 1190; re-en. Sec. 6915, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1937; R.C.M. 1947, 39-112.

1-5-205. Form of certificate of acknowledgment by attorney-in-fact. The certificate of acknowledgment by an attorney-in-fact must be substantially in the following form:

State of ....
County of ....

On this .... day of .... in the year ...., before me (here insert the name and quality of the officer), personally appeared ...., known to me (or proved to me on the oath of ....) to be the person whose name is subscribed to the within instrument as the attorney-in-fact of ...., and acknowledged to me that he subscribed the name of .... thereto as principal and his own name as attorney-in-fact.

History: En. Sec. 1612, Civ. C. 1895; re-en. Sec. 4666, Rev. C. 1907; re-en. Sec. 6917, R.C.M. 1921; Cal. Civ. C. Sec. 1192; re-en. Sec. 6917, R.C.M. 1935; R.C.M. 1947, 39-114.

1-5-206. Acknowledgment by married person. (1) The acknowledgment of a married person to an instrument purporting to be executed by such person must be taken the same as that of any other person.

(2) A conveyance by a married person has the same effect as if such person were unmarried and may be acknowledged in the same manner.

History: (1)En. Sec. 1606, Civ. C. 1895; re-en. Sec. 4660, Rev. C. 1907; re-en. Sec. 6911, R.C.M. 1921; Cal. Civ. C. Sec. 1186; re-en. Sec. 6911, R.C.M. 1935; amd. Sec. 16, Ch. 535, L. 1975; Sec. 39-108, R.C.M. 1947; (2)En. Sec. 1607, Civ. C. 1895; re-en. Sec. 4661, Rev. C. 1907; re-en. Sec. 6912, R.C.M. 1921; Cal. Civ. C. Sec. 1187; Based on Field Civ. C. Sec. 522; re-en. Sec. 6912, R.C.M. 1935; amd. Sec. 17, Ch. 535, L. 1975; Sec. 39-109, R.C.M. 1947; R.C.M. 1947, 39-108, 39-109.

1-5-207. Form of certificate of acknowledgment by married person. The certificate of acknowledgment by a married person must be substantially in the form prescribed in 1-5-203.

History: En. Sec. 1611, Civ. C. 1895; re-en. Sec. 4665, Rev. C. 1907; re-en. Sec. 6916, R.C.M. 1921; Cal. Civ. C. Sec. 1191; re-en. Sec. 6916, R.C.M. 1935; amd. Sec. 18, Ch. 535, L. 1975; R.C.M. 1947, 39-113.

1-5-208. Effect of acknowledgment taken in accordance with another state's laws. Notwithstanding any provision contained in this chapter, the acknowledgment of any instrument without this state in compliance with the manner and form prescribed by the laws of the place of its execution, if in a state, territory, or insular possession of the United States or in the District of Columbia, verified by the official seal of the officer before whom it is acknowledged, shall have the same effect as an acknowledgment in the manner and form prescribed by the laws of this state for instruments executed within the state.

History: En. Sec. 1, Ch. 81, L. 1953; R.C.M. 1947, 39-103.1.

Part 3

Proof of Execution

1-5-301. Who may prove execution of instrument. Proof of the execution of an instrument which has not been acknowledged may be made by:

(1) all of the parties who executed it or any one of them;

(2) a subscribing witness; or

(3) other witnesses in cases mentioned in 1-5-302.

History: En. Sec. 1615, Civ. C. 1895; re-en. Sec. 4669, Rev. C. 1907; re-en. Sec. 6920, R.C.M. 1921; Cal. Civ. C. Sec. 1195; re-en. Sec. 6920, R.C.M 1935; R.C.M. 1947, 39-117; amd. Sec. 5, Ch. 119, L. 1979.

1-5-302. When execution may be proved by handwriting. The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

(1) when the parties and all the subscribing witnesses are dead;

(2) when the parties and all the subscribing witnesses are nonresidents of the state;

(3) when the place of their residence is unknown to the party desiring the proof and cannot be ascertained by the exercise of due diligence;

(4) when the subscribing witness conceals himself or cannot be found by the officer by the exercise of due diligence in attempting to serve the subpoena or attachment; or

(5) in case of the continued failure or refusal of the witness to testify for the space of 1 hour after his appearance.

History: En. Sec. 1618, Civ. C. 1895; re-en. Sec. 4672, Rev. C. 1907; re-en. Sec. 6923, R.C.M. 1921; Cal. Civ. Sec. 1198; re-en. Sec. 6923, R.C.M. 1935; R.C.M. 1947, 39-120.

1-5-303. Facts which must be shown when offering proof of handwriting. The evidence taken under 1-5-302 must satisfactorily prove to the officer the following facts:

(1) the existence of one or more of the conditions mentioned in 1-5-302;

(2) that the witness testifying knew the person whose name purports to be subscribed to the instrument as a party and is well acquainted with his signature;

(3) that the witness testifying personally knew the person who subscribed the instrument as a witness and is well acquainted with his signature;

(4) that the signature or signatures in question are genuine; and

(5) the place of residence of the witness.

History: En. Sec. 1619, Civ. C. 1895; re-en. Sec. 4673, Rev. C. 1907; re-en. Sec. 6924, R.C.M. 1921; Cal. Civ. C. Sec. 1199; re-en. Sec. 6924, R.C.M. 1935; R.C.M. 1947, 39-121; amd. Sec. 6, Ch. 119, L. 1979.

1-5-304. Powers of officer taking proof of execution. Officers authorized to take the proof of instruments are authorized in such proceedings to:

(1) administer oaths or affirmations as prescribed by law;

(2) employ and swear interpreters; and

(3) issue subpoenas as prescribed by law.

History: En. Sec. 1621, Civ. C. 1895; re-en. Sec. 4675, Rev. C. 1907; re-en. Sec. 6926, R.C.M. 1921; Cal. Civ. C. Sec. 1201; re-en. Sec. 6926, R.C.M. 1935; R.C.M. 1947, 39-123; amd. Sec. 7, Ch. 119, L. 1979.

1-5-305. Contents of certificate of proof. An officer taking proof of the execution of any instrument must, in his certificate endorsed thereon or attached thereto, set forth all the matters required by law to be done or known by him or proved before him on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their testimony.

History: En. Sec. 1620, Civ. C. 1895; re-en. Sec. 4674, Rev. C. 1907; re-en. Sec. 6925, R.C.M. 1921; Cal. Civ. C. Sec. 1200; Based on Field Civ. C. Sec. 526; re-en. Sec. 6925, R.C.M. 1935; R.C.M. 1947, 39-122.

Part 4

Notaries Public

1-5-401. Appointment. The governor may appoint and commission as many notaries public for the state of Montana as in his judgment may be deemed best.

History: En. Sec. 910, Pol. C. 1895; re-en. Sec. 317, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1909; re-en. Sec. 385, R.C.M. 1921; Cal. Pol. C. Sec. 791; re-en. Sec. 385, R.C.M. 1935; R.C.M. 1947, 56-101(part).

1-5-402. Qualifications — residence. Every person appointed as notary public must, at the time of his appointment, be a citizen of the

United States and of the state of Montana for at least 1 year preceding his appointment and must continue to reside within the state of Montana. Removal from the state vacates his office and is equivalent to resignation.

History: En. Sec. 911, Pol. C. 1895; re-en. Sec. 318, Rev. C. 1907; amd. Sec. 2, Ch. 103, L. 1909; re-en. Sec. 386, R.C.M. 1921; Cal. Pol. C. Sec. 792; re-en. Sec. 386, R.C.M. 1935; R.C.M. 1947, 56-102.

1-5-403. Term of office. The term of office of a notary public is 3 years from and after the date of his commission.

History: En. Sec. 912, Pol. C. 1895; re-en. Sec. 319, Rev. C. 1907; re-en. Sec. 387, R.C.M. 1921; Cal. Pol. C. Sec. 793; re-en. Sec. 387, R.C.M. 1935; R.C.M. 1947, 56-103.

1-5-404. Revocation of commission. Upon 10 days' notice, the governor may revoke the commission of any notary public for any cause he may deem sufficient.

History: En. Sec. 922, Pol. C. 1895; re-en. Sec. 329, Rev. C. 1907; re-en. Sec. 398, R.C.M. 1921; re-en. Sec. 398, R.C.M. 1935; R.C.M. 1947, 56-114.

1-5-405. Bond and commission. Each notary public must give an official bond in the sum of $1,000, which bond must be approved by the secretary of state. Upon the approval of said bond and the filing in the office of the secretary of state of the official oath of such notary public, the governor shall issue a commission.

History: En. Secs. 324-325, Rev. C. 1907; amd. Sec. 5, Ch. 103, L. 1909; amd. Sec. 1, Ch. 7, L. 1921; re-en. Sec. 394, R.C.M. 1921; Cal. Pol. C. Sec. 799; re-en. Sec. 394, R.C.M. 1935; R.C.M. 1947, 56-110.

1-5-406. Liabilities on official bond. For the official misconduct or neglect of a notary public, he and the sureties on his official bond are liable to the parties injured thereby for all damages sustained.

History: En. Sec. 919, Pol. C. 1895; re-en. Sec. 326, Rev. C. 1907; re-en. Sec. 395, R.C.M. 1921; Cal. Pol. C. Sec. 801; re-en. Sec. 395, R.C.M. 1935; R.C.M. 1947, 56-111.

1-5-407. Certifying the official character of a notary. The secretary of state may certify to the official character of such notary public. Any notary public may file a copy of his commission in the office of any county clerk of any county in the state, and thereafter said county clerk may certify to the official character of such notary public.

History: En. Sec. 2, p. 101, L. 1885; re-en. Sec. 1569, 5th Div. Comp. Stat. 1887; re-en. Sec. 920, Pol. C. 1895; re-en. Sec. 327, Rev. C. 1907; amd. Sec. 6, Ch. 103, L. 1909; re-en. Sec. 396, R.C.M. 1921; re-en. Sec. 396, R.C.M. 1935; R.C.M. 1947, 56-112.

1-5-408. Fees for filing commission and issuing certificates. The secretary of state shall receive for each certificate of official character issued, with seal attached, $2. The county clerk of any county in this state with whom a copy of notarial commission has been filed shall receive for filing same 50 cents and for each certificate of official character issued, with seal attached, 50 cents.

History: En. Sec. 3, p. 101, L. 1885; re-en. Sec. 1570, 5th Div. Comp. Stat. 1887; re-en. Sec. 921, Pol. C. 1895; re-en. Sec. 328, Rev. C. 1907; amd. Sec. 7, Ch. 103, L. 1909; re-en. Sec. 397, R.C.M. 1921; re-en. Sec. 397, R.C.M. 1935; amd. Sec. 12, Ch. 117, L. 1961; R.C.M. 1947, 56-113.

1-5-409 through 1-5-414 reserved.

1-5-415. Statewide jurisdiction. The jurisdiction of notaries public shall be coextensive with the boundaries of the state, irrespective of their place of residence within the state. Every person receiving a commission as notary public shall have jurisdiction to perform his official duties and acts in every county of the state of Montana.

History: Ap. p. Sec. 910, Pol. C. 1895; re-en. Sec. 317, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1909; re-en. Sec. 385, R.C.M. 1921; Cal. Pol. C. Sec. 791; re-en. Sec. 385, R.C.M. 1935; Sec. 56-101, R.C.M. 1947; Ap. p. Sec. 4, Ch. 103, L. 1909; re-en. Sec. 389, R.C.M. 1921; re-en. Sec. 389, R.C.M. 1935; Sec. 56-105, R.C.M. 1947; R.C.M. 1947, 56-101(part), 56-105(part).

1-5-416. Powers and duties. A notary public shall:

(1) whenever requested, demand acceptance and payment of foreign, domestic, and inland bills of exchange or promissory notes and protest the same for nonacceptance or nonpayment and exercise such other powers and duties as by the law of nations and according to commercial usages or by the laws of any other state, government, or country may be performed by notaries and keep a record of such acts;

(2) take the acknowledgment or proof of any power of attorney, mortgage, deed, grant, transfer, or other instrument executed by any person and give a certificate of such proof or acknowledgment, endorsed on or attached to the instrument;

(3) take depositions and affidavits and administer oaths and affirmations in all matters incident to the duties of his office or to be used before any court, judge, officer, or board in this state;

(4) whenever requested and upon payment of his fees therefor, make and give a certified copy of any record in his office;

(5) provide and keep an official seal, upon which must be engraved the name of the state of Montana and the words "Notarial Seal", with the surname of the notary and at least the initials of his given name;

(6) authenticate with his official seal all official acts. Whenever the notary public signs his name officially as a notary public, he shall add to his signature the words "Notary Public for the State of Montana, residing at.... (stating the name of his post office)" and shall endorse upon the instrument the date of the expiration of his commission.

History: En. Sec. 913, Pol. C. 1895; re-en. Sec. 320, Rev. C. 1907; amd. Sec. 3, Ch. 103, L. 1909; re-en. Sec. 388, R.C.M. 1921; Cal. Pol. C. Sec. 794; re-en. Sec. 388, R.C.M. 1935; R.C.M. 1947, 56-104; amd. Sec. 8, Ch. 119, L. 1979.

1-5-417. Authority of notaries who are stockholders, officers, or employees of corporations. It shall be lawful for any notary public who is a stockholder, director, officer, or employee of a bank or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation, to administer an oath to any other stockholder, director, officer, employee, or agent of such corporation, or to protest for nonaccceptance or nonpayment bills of exchange, drafts, checks, notes, and other negotiable instruments which may be owned or held for collection by such bank or other corporation; provided, it shall be unlawful for any notary public to take the acknowledgment of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer, or employee where such notary is a party to such instrument, either individually or as a representative of such bank or other corporation, or to protest any negotiable instrument owned or held for collection by such bank or other corporation where such notary is individually a party to such instrument.

History: En. Sec. 1, Ch. 77, L. 1909; re-en. Sec. 390, R.C.M. 1921; re-en. Sec. 390, R.C.M. 1935; R.C.M. 1947, 56-106.

1-5-418. Fees of notaries. (1) Fees of notaries public are as follows:

(a) for drawing, copying, and recording each and every protest for the nonpayment of a promissory note or for the nonpayment or nonacceptance of a bill of exchange, order, draft, or check, $1;

(b) for drawing and serving every notice of nonpayment of a promissory note or of the nonpayment or nonacceptance of a bill of exchange, order, draft, or check, 25 cents;

(c) for drawing an affidavit, deposition, or other paper for which provision is not herein made, for each folio, unless otherwise prescribed, 20 cents;

(d) for taking an acknowledgment or proof of a deed or other instrument, to include the seal and the writing of the certificate, for the first signature, $1;

(e) for each additional signature, 50 cents;

(f) for administering an oath or affirmation, 25 cents;

(g) for certifying an affidavit, with or without seal, including oath, 50 cents.

(2) The maximum fee that can be computed or charged for drawing, copying, and recording a protest and for drawing and serving the notices of nonpayment or nonacceptance shall be $2.50.

History: En. Sec. 1, Ch. 44, L. 1907; Sec. 3165, Rev. C. 1907; re-en. Sec. 4914, R.C.M. 1921; re-en. Sec. 4914, R.C.M. 1935; R.C.M. 1947, 25-112.

1-5-419. Transfer of records upon termination of office. It is the duty of every notary public on his resignation or removal from office or at the expiration of his term and, in case of his death, of his legal representative to forthwith deposit all the records kept by him in the office of the county clerk of the county in which he was resident. On failure to do so, the person so offending is liable to damages to any person injured thereby.

History: En. Sec. 915, Pol. C. 1895; re-en. Sec. 322, Rev. C. 1907; re-en. Sec. 392, R.C.M. 1921; Cal. Pol. C. Sec. 796; re-en. Sec. 392, R.C.M. 1935; R.C.M. 1947, 56-108.

1-5-420. Powers and duties of clerk with whom records deposited. It is the duty of each clerk aforesaid to receive and safely keep all such records and papers of the notary in the case above named and to give attested copies of them under his seal, for which he may demand such fees as by law may be allowed to the notaries, and such copies shall have the same effect as if certified by the notary.

History: En. Sec. 916, Pol. C. 1895; re-en. Sec. 323, Rev. C. 1907; re-en. Sec. 393, R.C.M. 1921; Cal Pol. C. Sec. 797; re-en. Sec. 393, R.C.M. 1935; R.C.M. 1947, 56-109.

Part 5

Commissioners of Deeds
(Sections 1-5-501 through 1-5-507 repealed.
Sec. 14, Ch. 119, L. 1979)

CHAPTER 6

OATHS

Part 1 — General Provisions

Section
1-6-101. Officers who may administer oaths.
1-6-102. Form of ordinary oath.
1-6-103. Variation of oath to suit witness's belief.
1-6-104. Affirmation or declaration in lieu of oath.

Part 1

General Provisions

1-6-101. Officers who may administer oaths. Every court, judge, clerk of any court, justice, notary public, and officer or person authorized to take testimony in any action or proceeding or to decide upon evidence has power to administer oaths or affirmations.

History: En. Sec. 360, p. 118, Bannack Stat.; re-en. Sec. 418, p. 219, L. 1867; re-en. Sec. 492, p. 135, Cod. Stat. 1871; amd. Sec. 671, p. 214, L. 1877; re-en. Sec. 671, 1st Div. Rev. Stat. 1879; re-en. Sec. 693, 1st Div. Comp. Stat. 1887; amd. Sec. 3430, C. Civ. Proc. 1895; re-en. Sec. 8049, Rev. C. 1907; re-en. Sec. 10693, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2093; re-en. Sec. 10693, R.C.M. 1935; R.C.M. 1947, 93-2401-1.

1-6-102. Form of ordinary oath. An oath or affirmation in an action or proceeding may be administered as follows: the person who swears or affirms expressing his assent when addressed in the following form, "You do solemnly swear (or affirm, as the case may be) that the evidence you shall give in this issue (or matter), pending between .... and ...., shall be the truth, the whole truth, and nothing but the truth, so help you God".

History: En. Sec. 3431, C. Civ. Proc. 1895; re-en. Sec. 8050, Rev. C. 1907; re-en. Sec. 10694, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2094; re-en. Sec. 10694, R.C.M. 1935; R.C.M. 1947, 93-2401-2.

1-6-103. Variation of oath to suit witness's belief. The court shall vary the mode of swearing or affirming to accord with the witness's beliefs whenever it is satisfied that the witness has a distinct mode of swearing or affirming.

History: (1)En. Sec. 3432, C. Civ. Proc. 1895; re-en. Sec. 8051, Rev. C. 1907; re-en. Sec. 10695, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2095; re-en. Sec. 10695, R.C.M. 1935; Sec. 93-2401-3, R.C.M. 1947; (2)En. Sec. 361, p. 118, Bannack Stat.; re-en. Sec. 419, p. 219, L. 1867; re-en. Sec. 493, p. 135, Cod. Stat. 1871; re-en. Sec. 672, p. 215, L. 1877; re-en. Sec. 672, 1st Div. Rev. Stat. 1879; re-en. Sec. 694, 1st Div. Comp. Stat. 1887; re-en. Sec. 3433, C. Civ. Proc. 1895; re-en. Sec. 8052, Rev. C. 1907; re-en. Sec. 10696, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2096; re-en. Sec. 10696, R.C.M. 1935; Sec. 93-2401-4, R.C.M. 1947; R.C.M. 1947, 93-2401-3, 93-2401-4; amd. Sec. 9, Ch. 119, L. 1979.

1-6-104. Affirmation or declaration in lieu of oath. Any person who desires it may, at his option, instead of taking an oath make his solemn affirmation or declaration by assenting when addressed in the following form: "You do solemnly affirm (or declare), etc.", as in 1-6-102.

History: En. Sec. 362, p. 118, Bannack Stat.; en. Sec. 420, p. 219, L. 1867; re-en. Sec. 494, p. 135, Cod. Stat. 1871; amd. Sec. 673, p. 215, L. 1877; re-en. Sec. 673, 1st Div. Rev. Stat. 1879; re-en.

Sec. 695, 1st Div. Comp. Stat. 1887; amd. Sec. 3434, C. Civ. Proc. 1895; re-en. Sec. 8053, Rev. C. 1907; re-en. Sec. 10697, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2097; re-en. Sec. 10697, R.C.M. 1935; R.C.M. 1947, 93-2401-5.

CHAPTERS 7 THROUGH 10

RESERVED

CHAPTER 11

PUBLICATION AND UPDATING OF THE CODE CODE COMMISSIONER

Part 1 — General Provisions

Section

1-11-101. Definitions.
1-11-102. Name — citation.
1-11-103. Effect of Montana Code Annotated.

Part 2 — Code Commissioner

1-11-201. Office of code commissioner created.
1-11-202. Qualifications of code commissioner.
1-11-203. Supervision by legislative council.
1-11-204. Duties of code commissioner.

Part 3 — Publication

1-11-301. Publication and sale of Montana Code Annotated.
1-11-302. Updates of Montana Code Annotated.
1-11-303. Authority to issue ancillary publications.
1-11-304. Copyrights.

Part 1

General Provisions

1-11-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Code" or "codes" means the Revised Codes of Montana, 1947, the pocket supplements thereto, and the replacement volumes.

(2) "Recodify" means to compile, arrange, rearrange, and prepare for publication. It includes, without changing the meaning, effect, or intent of any law:

(a) correcting or changing punctuation, capitalization, spelling, grammatical construction, and numbering as required by uniform literary and bill drafting practice;

(b) substituting the appropriate new code division reference for reference to a section of, to a part of, or to an entire "act";

(c) substituting calendar date for "effective date", "hereafter", and similar terms;

(d) creating new titles, chapters, parts, sections, or other divisions of the code;

(e) changing or inserting language made necessary because of rearrangement;

(f) eliminating redundant words;

(g) when given direction or authority by another statute, correcting inaccurate or obsolete references to:

(i) titles of officers or agencies, such as those changed by executive reorganization statutes;

(ii) other code sections, such as those which have been repealed or repealed and replaced;

(h) changing inaccurate terminology to comply with statutory definitions or short form amendments, such as those found in 1-1-202(7) or 3-11-101(2);

(i) whether originally written by the legislature or by the code publisher, changing or creating section captions (catch lines) to clearly reflect the content of the section.

History: En. 12-501 by Sec. 1, Ch. 419, L. 1975; amd. Sec. 1, Ch. 1, L. 1977; R.C.M. 1947, 12-501.

1-11-102. Name — citation. The recodified laws shall be known as the "Montana Code Annotated" and may be cited as "MCA".

History: En. 12-504 by Sec. 4, Ch. 419, L. 1975; R.C.M. 1947, 12-504; amd. Sec. 10, Ch. 119, L. 1979.

Compiler's Comments

Adoption of code. Sec. 1, Ch. 1, L. 1979 provided: "(1) The Montana Code Annotated (1978) as recodified and published by the code commissioner under the authority of Chapter 419, Laws of 1975, as amended by Chapter 1, Laws of 1977, is adopted as prima facie the law of Montana.

(2) The Montana Code Annotated may be cited as "MCA" and shall be given effect as provided in section 6, Chapter 419, Laws of 1975, as amended by section 4, Chapter 1, Laws of 1977, and set forth in 1-11-103, MCA."

Effective date. Sec. 4, Ch. 1, L. 1979 provided: "This act is effective on passage and approval." Approved January 10, 1979.

1-11-103. Effect of Montana Code Annotated. (1) The Montana Code Annotated shall be enacted as a reenactment of the Revised Codes of Montana, 1947, and the supplements thereto.

(2) The enactment of the Montana Code Annotated shall not:

(a) revive a law repealed or superseded before the effective date of the Montana Code Annotated;

(b) affect an act done, right accrued, or obligation incurred or imposed by law prior to the effective date of the Montana Code Annotated;

(c) affect any action, suit, or proceeding pending on such effective date;

(d) repeal statutes of a nongeneral, nonpermanent nature such as severability, construction, validating, repealing, or similar statutes omitted from the Montana Code Annotated.

(3) The Montana Code Annotated shall be given effect as a continuation of the Revised Codes of Montana and not as a new enactment. A defect in title of any act set out in prior laws and reenacted by the Montana Code Annotated is cured by such enactment.

(4) No implication or presumption of legislative construction is to be drawn from the classification or arrangement of the Montana Code Annotated.

(5) Unless specifically adopted as such by the legislature, annotations, code commissioner notes, catchlines, or other editorial material included in the Montana Code Annotated may not be construed as part of the legislative text but are only for the purpose of convenience, orderly arrangement, and information.

(6) After enactment, the Montana Code Annotated, including all subsequent replacement volumes, shall be prima facie the official laws of Montana. In case of any inconsistency in meaning arising through omission or otherwise between the provisions of the Montana Code Annotated and the corresponding portion of the official enrolled bill on file with the secretary of state, effect shall be given to the official enrolled bill.

History: En. 12-506 by Sec. 6, Ch. 419, L. 1975; amd. Sec. 4, Ch. 1, L. 1977; R.C.M. 1947, 12-506; amd. Sec. 11, Ch. 119, L. 1979.

Part 2

Code Commissioner

1-11-201. Office of code commissioner created. There is created within the legislative council the office of code commissioner.

History: En. 12-502 by Sec. 2, Ch. 419, L. 1975; R.C.M. 1947, 12-502; amd. Sec. 1, Ch. 159, L. 1979.

1-11-202. Qualifications of code commissioner. To be eligible to be code commissioner, a person must be licensed to practice law in Montana for at least 5 years and demonstrate a knowledge of code arranging and recodification procedures.

History: En. 12-503 by Sec. 3, Ch. 419, L. 1975; R.C.M. 1947, 12-503.

1-11-203. Supervision by legislative council. The code commissioner is subject to the general supervision and policy of the legislative council.

History: En. 12-505 by Sec. 5, Ch. 419, L. 1975; amd. Sec. 2, Ch. 1, L. 1977; R.C.M. 1947, 12-505(1).

1-11-204. Duties of code commissioner. (1) Prior to January 1, 1979, the code commissioner shall recodify all the laws of a general and permanent nature appearing in the codes and session laws and prepare them for publication.

(2) Prior to January 1, 1979, the commissioner shall prepare and submit to the legislature a report which is certified by the commissioner as the "Official Report of the Montana Code Commissioner", together with a bill enacting the Montana Code Annotated. A copy of the report and bill shall be deposited with the secretary of state. The report shall explain and indicate, in tabular or other form, all changes made during recodification, other than punctuation and capitalization, to clearly indicate the character of each change.

(3) Prior to the November 1 immediately preceding each regular legislative session, the commissioner shall prepare and submit to the legislative

council a report, in tabular or other form, indicating the commissioner's recommendations for legislation which will:

(a) eliminate archaic or outdated laws;

(b) eliminate obsolete or redundant wording of laws;

(c) eliminate any duplications in law and any laws repealed directly or by implication;

(d) clarify existing laws;

(e) correct errors and inconsistencies within the laws.

(4) The commissioner shall cause to be prepared for publication with the Montana Code Annotated the following material:

(a) Statutory history of each code section;

(b) Annotations of state and federal court decisions relating to the subject matter of the code;

(c) Such editorial notes, cross-references, and other matter as the commissioner considers desirable or advantageous;

(d) The Declaration of Independence;

(e) The Constitution of the United States of America and amendments thereto;

(f) Acts of congress relating to the authentication of laws and records;

(g) The Organic Act of the Territory of Montana;

(h) The Enabling Act;

(i) The 1972 Constitution of the State of Montana and any amendments thereto;

(j) The Ordinances relating to federal relations and elections;

(k) Rules of civil, criminal, and appellate procedure and such other rules of procedure as the Montana supreme court may adopt; and

(l) A complete subject index, a popular name index, and comparative disposition tables or cross-reference indexes relating sections of the Montana Code Annotated to prior compilations and session laws.

(5) After publication of the Montana Code Annotated, the code commissioner shall:

(a) annotate, arrange, and prepare for publication all laws of a general and permanent nature enacted at each legislative session and assign catchlines and code section numbers to each new section;

(b) continue to codify, index, arrange, rearrange, and generally update the Montana Code Annotated to maintain an orderly and logical arrangement of the laws in order to avoid future need for bulk revision;

(c) prepare and submit to each legislature a report certified as the "Official Report of the Montana Code Commissioner—(year)" which indicates, in tabular or other form, all changes made during the continuous recodification, other than punctuation, spelling, and capitalization, to clearly indicate the character of each change made since the last such report.

(6) From time to time the commissioner shall confer with members of the judiciary and the state bar relative to recodification procedures.

History: En. 12-505 by Sec. 5, Ch. 419, L. 1975; amd. Sec. 2, Ch. 1, L. 1977; R.C.M. 1947, 12-505(2) thru (7); amd. Sec. 12, Ch. 119, L. 1979.

Compiler's Comments

Effect of publishing supreme court rules. Sec. 2, Ch. 1, L. 1979 provided: "(1) The legislature recognizes the supreme court's authority pursuant to Article VII, section 2, of the Montana constitution to make rules governing procedure and practice before the courts.

(2) The legislature also recognizes that the practice of printing such rules with the Montana statutes is of benefit to code users and facilitates implementation of Article VII, section 2(3), of the Montana constitution concerning disapproval by the legislature.

(3) Therefore, the Montana Rules of Civil Procedure, printed as chapter 20, Title 25, MCA; the Montana Rules of Appellate Civil Procedure, printed as chapter 21, Title 25, MCA; and the Montana Rules of Evidence, printed as chapter 10, Title 26, MCA, appear only for the purpose of facilitating use of the code. Neither this act nor publication of the rules may be construed as an attempt to readopt or promulgate the rules."

Part 3

Publication

1-11-301. Publication and sale of Montana Code Annotated. (1) The legislative council with the advice of the code commissioner shall decide on the quantity, quality, style, format, and grade of all publications prior to having the code commissioner call for bids for the printing and binding and contract for their publication. The code commissioner shall follow the requirements of state law relating to contracts and bids, except as herein provided.

(2) The methods of sale to the public of the Montana Code Annotated and supplements or other subsequent and ancillary publications thereto may be included as an alternative specification and bid and as a part of a contract to be let by bids by the code commissioner.

(3) The sales price to the public shall be fixed by the legislative council but may not exceed the cost price plus 20%. All revenues generated from the sale of the Montana Code Annotated or ancillary publications shall be deposited in the revolving fund, from which fund appropriations may be made for the use of the office and facilities of the legislative council under this chapter.

(4) Sets of the Montana Code Annotated purchased by the state or local governmental agencies that are supported by public funds shall be for the cost price of the sets.

History: En. 12-507 by Sec. 7, Ch. 419, L. 1975; amd. Sec. 5, Ch. 1, L. 1977; R.C.M. 1947, 12-507; amd. Sec. 3, Ch. 1, L. 1979; amd. Sec. 4, Ch. 265, L. 1979.

Compiler's Comments

Effective date. Sec. 5, Ch. 265, L. 1979, provided: "This act is effective on passage and approval." Approved March 26, 1979.

Amendment superseded. Sec. 3, Ch. 1, L. 1979, amended 1-11-301. Sec. 4, Ch. 265, L. 1979, amended Sec. 3, Ch. 1, L. 1979. Therefore, the changes made by Ch. 265 superseded those made by Ch. 1.

1-11-302. Updates of Montana Code Annotated. (1) The publication of updates to the Montana Code Annotated may be as a cumulative supplement or replacement volume or in any other format approved by the legislative council.

(2) The supplements or replacements shall be certified, published, copyrighted, and deposited with the secretary of state. The supplements and replacements become effective on the date deposited with and certified to the secretary of state.

History: En. 12-510 by Sec. 10, Ch. 419, L. 1975; amd. Sec. 7, Ch. 1, L. 1977; R.C.M. 1947, 12-510(1), (2); amd. Sec. 13, Ch. 119, L. 1979.

1-11-303. Authority to issue ancillary publications. The legislative council may issue such supplementary and ancillary publications as it considers necessary or desirable in aid of the general use and purposes of the Montana Code Annotated and the supplements or replacements thereto.

History: En. 12-510 by Sec. 10, Ch. 419, L. 1975; amd. Sec. 7, Ch. 1, L. 1977; R.C.M. 1947, 12-510(3).

1-11-304. Copyrights. The Montana Code Annotated, supplements, or other publications ancillary thereto, as published, shall be the sole property of the state of Montana and shall be copyrighted for and in behalf of the state of Montana by the secretary of state.

History: En. 12-508 by Sec. 8, Ch. 419, L. 1975; R.C.M. 1947, 12-508.

CHAPTER 12

COMMISSION ON UNIFORM STATE LAWS

Part 1 — General Provisions

Section
1-12-101. Appointment, composition, term of office.
1-12-102. Vacancies.
1-12-103. Meetings and organization.
1-12-104. Duties of commissioners.

Part 1

General Provisions

1-12-101. Appointment, composition, term of office. A commission is hereby created to be known as the commission on uniform state laws which shall consist of three recognized members of the bar or members of the faculty of the law school of the state university of Montana, who shall be appointed by the governor for terms of 4 years each or until their successors are appointed, and in addition thereto, any residents of this state who because of long service in the cause of the uniformity of state legislation shall have been elected life members of the national conference of commissioners on uniform state laws.

History: En. Sec. 1, Ch. 175, L. 1945; R.C.M. 1947, 12-401.

1-12-102. Vacancies. If an appointed commissioner dies, resigns, or fails or refuses to serve, his office becomes vacant. The governor shall appoint a qualified person to fill the vacancy for the unexpired term.

History: En. Sec. 2, Ch. 175, L. 1945; amd. Sec. 2, Ch. 309, L. 1977; R.C.M. 1947, 12-402.

1-12-103. Meetings and organization. The commissioners shall meet at least once in 2 years and shall organize by the election of one of their number as chairman and another as secretary, who shall hold their respective offices for a term of 2 years and until their successors are elected.

History: En. Sec. 3, Ch. 175, L. 1945; R.C.M. 1947, 12-403.

1-12-104. Duties of commissioners. (1) Each commissioner shall attend the meeting of the national conference of commissioners on uniform state laws and, both in and out of such national conference, shall do all in his power to promote uniformity in state laws upon all subjects where uniformity may be deemed desirable and practicable.

(2) Said commission shall report as provided in 2-7-102.

(3) It shall also be the duty of said commission to bring about as far as practicable the uniform judicial interpretation of all uniform laws.

History: **En. Sec. 4, Ch. 175, L. 1945; amd. Sec. 8, Ch. 93, L. 1969; R.C.M. 1947, 12-404.**

TITLE 2

GOVERNMENT STRUCTURE AND ADMINISTRATION

Ch.
1. Sovereignty and Jurisdiction.
2. Standards of Conduct.
3. Public Participation in Governmental Operations.
4. Administrative Procedure Act.
Chapter 5 reserved.
6. Public Records.
7. Reports and Audits.
8. Legislative Review.
9. Liability Exposure and Insurance Coverage.
Chapters 10 through 14 reserved.
15. Executive Branch Officers and Agencies.
16. Public Officers.
17. Property Management.
18. State Employee Classification, Compensation, and Benefits.
19. Termination of State Agencies.

CHAPTER 1

SOVEREIGNTY AND JURISDICTION

Part 1 — Sovereignty and Jurisdiction of the State

Section
2-1-101. Sovereignty and style of process.
2-1-102. Sovereignty and jurisdiction of the state.
2-1-103. Repealed. Sec. 32, Ch. 184, L. 1979.

Part 2 — Cession and Retrocession of Jurisdiction

2-1-201. Jurisdiction in federal enclaves.
2-1-202. Jurisdiction over lands purchased by United States — reservation of rights to state.
2-1-203. Withdrawal of offer to cede legislative jurisdiction.
2-1-204. Military reservations — service of process.
2-1-205. Glacier National Park.
2-1-206. Cession and retrocession of jurisdiction over Blackfeet highway.
2-1-207. Yellowstone National Park.
2-1-208. Withdrawal of consent to purchase additional state lands for national park.
2-1-209. Concurrent jurisdiction over Fort Peck Dam ceded to United States — reservation of rights to state.
2-1-210. Consent to purchase of lands by United States for national forest purposes — jurisdiction.
2-1-211. Consent to purchase lands for migratory bird reservations — jurisdiction.
2-1-212. Acceptance of concurrent jurisdiction over veterans administration center.
2-1-213. Acceptance of concurrent jurisdiction over Big Hole national battlefield.
2-1-214. Concurrent jurisdiction of the United States over certain lands dedicated to national park purposes.
2-1-215. Acceptance of jurisdiction over federal lands.
2-1-216. Filing of acceptance of jurisdiction over federal lands.

Part 3 — Jurisdiction on Indian Lands

2-1-301. Assumption of criminal jurisdiction of Flathead Indian country.

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2-1-305. Indian culture protected.
2-1-306. Withdrawal of consent to state jurisdiction.
2-1-307. Service of process.

Part 1

Sovereignty and Jurisdiction of the State

2-1-101. Sovereignty and style of process. The sovereignty of the state resides in the people thereof, but the style of all process must be "The State of Montana", and all prosecutions must be conducted in the name of the state.

History: En. Sec. 30, Pol. C. 1895; re-en. Sec. 20, Rev. C. 1907; re-en. Sec. 19, R.C.M. 1921; Cal. Pol. C. Sec. 30; re-en. Sec. 19, R.C.M. 1935; R.C.M. 1947, 83-101.

2-1-102. Sovereignty and jurisdiction of the state. The sovereignty and jurisdiction of this state extend to all places within its boundaries as established by the constitution, excepting such places as are under the exclusive jurisdiction of the United States.

History: En. Sec. 40, Pol. C. 1895; re-en. Sec. 21, Rev. C. 1907; re-en. Sec. 20, R.C.M. 1921; Cal. Pol. C. Sec. 33; re-en. Sec. 20, R.C.M. 1935; R.C.M. 1947, 83-102(part).

2-1-103. Repealed. Sec. 32, Ch. 184, L. 1979.

Part 2

Cession and Retrocession of Jurisdiction

2-1-201. Jurisdiction in federal enclaves. The extent of the jurisdiction of this state over places that have been or may be ceded to, purchased, or condemned by the United States is qualified by the terms of such cession or the laws under which such purchase or condemnation has been or may be made.

History: En. Sec. 40, Pol. C. 1895; re-en. Sec. 21, Rev. C. 1907; re-en. Sec. 20, R.C.M. 1921; Cal. Pol. C. Sec. 33; re-en. Sec. 20, R.C.M. 1935; R.C.M. 1947, 83-102(part).

2-1-202. Jurisdiction over lands purchased by United States — reservation of rights to state. Pursuant to Article I, section 8, paragraph 17, of the constitution of the United States, consent to purchase is hereby given and exclusive jurisdiction ceded to the United States over and with respect to any lands within the limits of this state which shall be acquired by the complete purchase by the United States for any of the purposes described in said paragraph of the constitution of the United States, said jurisdiction to continue as long as said lands are held and occupied by the United States for said purposes; reserving, however, to this state the right to serve and execute civil or criminal process lawfully issued by the courts of the state within the limits of the territory over which jurisdiction is ceded in any suits or transactions for or on account of any rights obtained, obligations incurred, or crimes committed in this state, within or without such territory; and reserving further to the said state the right to tax persons and corporations, their franchises and property within said territory; and reserving further to the state and its inhabitants and citizens the right to fish and hunt and the right of access, ingress, and egress to and through said ceded territory to all persons owning or controlling livestock for the purpose of watering the same, and saving further to the state of Montana jurisdiction in the enforcement of state laws relating to the duties of the department of livestock and the department of health and environmental sciences and the enforcement of any regulations promulgated by said departments in accordance with the laws of the state of Montana; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, shall file an accurate map or plat and description by metes and bounds of said lands in the office of the county clerk and recorder of the county in which said lands are situated. If such lands shall be within the corporate limits of any city, such map or plat shall also be filed in the office of the city clerk of said city. The filing of such map as herein provided shall constitute acceptance of the jurisdiction by the United States as herein ceded.

History: **En. Sec. 1, p. 52, L. 1893; re-en. Sec. 43, Pol. C. 1895; re-en. Sec. 24, Rev. C. 1907; re-en. Sec. 25, R.C.M. 1921; re-en. Sec. 25, R.C.M. 1935; amd. Sec. 1, Ch. 155, L. 1939; amd. Sec. 102, Ch. 349, L. 1974; R.C.M. 1947, 83-108(part).**

2-1-203. Withdrawal of offer to cede legislative jurisdiction. The offer by the state of Montana to cede to the federal government legislative jurisdiction over areas within the state of Montana as contained in the act of the second legislative assembly of the state of Montana, 1891, entitled: "An Act Giving the Consent of the State of Montana to the Purchase, by the United States, of Land in any City or Town of the State, for the Purpose of United States Courthouse, Post Office and for Other Purposes" approved March 5, 1891, as amended by the act of the third legislative assembly of 1893, an act entitled: "An Act Giving the Consent of the State of Montana to the Purchase by the United States of Land in any City or Town of the State for the Purpose of United States Courthouse, Post Offices and for Other Like Purposes", approved March 9, 1893, is hereby withdrawn except as to areas heretofore completely purchased or acquired by the federal government and over which areas the federal government has heretofore assumed either exclusive legislative jurisdiction or concurrent legislative jurisdiction under the terms of one or the other of said acts.

History: **En. Sec. 1, p. 52, L. 1893; re-en. Sec. 43, Pol. C. 1895; re-en. Sec. 24, Rev. C. 1907; re-en. Sec. 25, R.C.M. 1921; re-en. Sec. 25, R.C.M. 1935; amd. Sec. 1, Ch. 155, L. 1939; amd. Sec. 102, Ch. 349, L. 1974; R.C.M. 1947, 83-108(part).**

2-1-204. Military reservations — service of process. (1) Authority is granted to and acknowledged in the United States to exercise exclusive legislation as provided by the constitution of the United States over the military reservation of Fort Missoula as established by law to the same extent and with the same effect as if the reservation had been purchased by the United States by consent of the legislative assembly of the state of Montana so long as it remains a military reservation.

(2) All legal process of the state, both civil and criminal, may be served upon persons and property found within the reservation in all cases where the United States does not have exclusive jurisdiction.

History: En. Sec. 41, Pol. C. 1895; re-en. Sec. 22, Rev. C. 1907; re-en. Sec. 21, R.C.M. 1921; re-en. Sec. 21, R.C.M. 1935; R.C.M. 1947, 83-103(part); amd. Sec. 1, Ch. 184, L. 1979.

2-1-205. Glacier National Park. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all the territory which is now or may hereafter be included in that tract of land in the state of Montana set aside by the act of congress, approved May 11, 1910, for the purposes of a national park, and known and designated as "The Glacier National Park", saving, however, to the said state the right to serve civil or criminal process within the limits of the aforesaid park in any suits or prosecution for or on account of rights acquired, obligations incurred, or crimes committed in said state but outside of said park; and saving, further, to the state the right to tax persons and corporations, their franchises and property on the lands included in said park; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, notifies the governor of this state that it assumes police or military jurisdiction over said park.

History: En. Sec. 1, Ch. 33, L. 1911; re-en. Sec. 22, R.C.M. 1921; re-en. Sec. 22, R.C.M. 1935; R.C.M. 1947, 83-104.

2-1-206. Cession and retrocession of jurisdiction over Blackfeet highway. (1) Concurrent police jurisdiction shall be and the same is hereby granted to the United States of America over and within all the territory which is now or may hereafter be included in the rights-of-way of the Blackfeet highway, including the highway itself throughout its length between Glacier Park Station and the Canadian boundary line and the rights-of-way of the highways on the Blackfeet Indian reservation connecting the Blackfeet highway with the Glacier Park road system, including the highways themselves.

(2) Jurisdiction herein granted shall not vest until the United States of America, through the proper officers, notifies the governor of the state of Montana that it assumes concurrent police jurisidiction over the said rights-of-way and the said highways.

(3) The provisions of the act of congress of March 15, 1958, P.L. 85-343, 85th congress, S.1828, 72 Stat. 35-36, to retrocede to the state of Montana such concurrent police jurisdiction as has been ceded to the United States of America over the rights-of-way of the Blackfeet highway, including the highway itself, and over the rights-of-way of its connection with the Glacier National Park road system on the Blackfeet Indian reservation, including the highways themselves, are hereby accepted by the state of Montana as required by section 2 of said act of March 15, 1958 (72 Stat. 35-36), with the understanding on the part of the state of Montana that the laws and regulations of the United States of America pertaining to Glacier National Park shall cease to apply to the territory of said rights-of-way and highways as in said act of the congress made and provided.

History: (1)En. Sec. 1, Ch. 37, L. 1929; re-en. Sec. 26.1, R.C.M. 1935; Sec. 83-111, R.C.M. 1947; (2)En. Sec. 2, Ch. 37, L. 1929; re-en. Sec. 26.2, R.C.M. 1935; Sec. 83-112, R.C.M. 1947; (3)En. Sec. 1, Ch. 157, L. 1963; Sec. 83-104.1, R.C.M. 1947; R.C.M. 1947, 83-104.1, 83-111, 83-112.

2-1-207. Yellowstone National Park. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over all that part of territory situate in the state of Montana now embraced in the Yellowstone National Park, described as follows:

Beginning at the intersection of the east boundary of Yellowstone Park with the south boundary of Montana; thence north to the northeast corner of said park; thence west along the north boundary of the park to the northwest corner thereof; thence south along the west boundary of the park to the boundary between Montana and Idaho; thence easterly along that boundary to the west boundary of Wyoming; thence north along the west boundary of Wyoming to the northwest corner thereof; thence east along the boundary between Wyoming and Montana to the east boundary of said park, the place of beginning; containing an area of approximately 198 square miles, saving, however, to the said state the right to serve civil or criminal process within the limits of the aforesaid described lands in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said state but outside the lands aforesaid, as long as the lands herein described are used for a national park and no other purposes.

History: En. Sec. 1, Ch. 112, L. 1917; re-en. Sec. 23, R.C.M. 1921; re-en. Sec. 23, R.C.M. 1935; amd. Sec. 1, Ch. 142, L. 1939; R.C.M. 1947, 83-106.

2-1-208. Withdrawal of consent to purchase additional state lands for national park. The consent of the state of Montana to the purchase by the United States of lands within the state of Montana to be embraced in Yellowstone National Park, other than the lands described in 2-1-207, and the consent of the state of Montana to the exercise of legislative jurisdiction by the United States over any additional lands to be embraced in said national park, as such consents may be contained in the act of the second legislative assembly of the state of Montana approved February 14, 1891, entitled, "An Act Ceding to the United States Jurisdiction Over Certain Lands" or any amendment of said act is hereby withdrawn, and exclusive legislative jurisdiction over all lands within the state of Montana that may be added hereafter to said national park shall be retained in the state of Montana.

History: En. Sec. 2, Ch. 142, L. 1939; R.C.M. 1947, 83-107.

2-1-209. Concurrent jurisdiction over Fort Peck Dam ceded to United States — reservation of rights to state. Consent to purchase or condemn all necessary lands is hereby given and concurrent jurisdiction shall be and the same is hereby ceded to the United States over the Fort Peck Dam, the body of water or artificial lake created by such dam, the land under such body of water, and any lands now owned or which may be hereafter acquired by the United States and which shall touch such body of water, all such being situated in the counties of Valley, Phillips, McCone, Garfield, Petroleum, and Fergus, state of Montana, saving, however, to the said state the right to serve civil or criminal process within the limits of the territory over which jurisdiction is so ceded in any suits or prosecutions for or on account of rights obtained, obligations incurred, or crimes committed in said state, within or without said territory, and saving further to the said state the right to tax persons and corporations, their franchises and property within said territory, and reserving further to the said state and its inhabitants, citizens, and nonresidents the right to fish or hunt by boat or otherwise and the right of access, ingress, and egress to and through said ceded territory to all persons owning or controlling livestock for the purpose of watering the same, and saving further to the state jurisdiction in the enforcement of the state laws relating to the duties of the department of livestock and the department of health and environmental sciences and the enforcement of regulations promulgated by said departments in accordance with the laws of said state; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, notifies the governor of the state of Montana that it assumes police or military jurisdiction over said territory.

History: En. Sec. 1, Ch. 50, Ex. L. 1933; re-en. Sec. 25.1, R.C.M. 1935; amd. Sec. 103, Ch. 349, L. 1974; R.C.M. 1947, 83-109.

2-1-210. Consent to purchase of lands by United States for national forest purposes — jurisdiction. (1) For the purpose of more effectively cooperating with the United States in the consolidating and rounding out of national forests in accordance with land-use plans and to facilitate the placing of forest lands other than national forest but which are integral with national forest lands under stable protection and administration to the end of public benefit and to help land owners, including the counties of the state in their discretion, to dispose of such of their lands as may be needed for national forest purposes, consent of the state of Montana is hereby given to the purchase by the United States of such lands in the state of Montana as in the opinion of the secretary of agriculture are needed for the purposes contemplated in section 6 of the act of congress approved March 1, 1911, commonly known as and called the Weeks law, and/or section 6 of the act of congress approved June 7, 1924, commonly known as the Clarke-McNary law, and/or any other provisions of any act of congress authorizing the purchase of land for national forest purposes.

(2) The jurisdiction of the state of Montana, both civil and criminal, over persons upon areas acquired under this section shall not be affected or changed by reason of their acquisition and administration by the United States, except so far as the punishment of offenses against the United States is concerned.

(3) The state shall have the same jurisdiction in respect to such lands as it has in respect to other national forest lands within the state.

(4) All property rights, easements, and benefits retained by or reserved to owners of lands purchased by the United States shall be subject to the tax laws of the state.

History: En. Sec. 1, Ch. 118, L. 1935; re-en. Sec. 25.2, R.C.M. 1935; R.C.M. 1947, 83-110.

2-1-211. Consent to purchase lands for migratory bird reservations — jurisdiction. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land, water, or land and water in the state of Montana as the United States may deem necessary for the establishment of migratory bird reservations in accordance with the act of congress approved February 18, 1929, (as amended), entitled "An Act to More Effectively Meet the Obligations of the United States under the Migratory Bird Treaty with Great Britain by

Lessening the Dangers Threatening Migratory Game Birds from Drainage and Other Causes by the Acquisition of Areas of Land and of Water to Furnish in Perpetuity Reservations for the Adequate Protection of such Birds; and Authorizing Appropriations for the Establishment of such Areas, their Maintenance and Improvement and for Other Purposes", reserving, however, to the state of Montana full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of said act of congress.

History: **En. Sec. 1, Ch. 96, L. 1961; R.C.M. 1947, 83-113.**

2-1-212. Acceptance of concurrent jurisdiction over veterans administration center. The state of Montana hereby accepts the cession of concurrent jurisdiction with the United States over the real property comprising the veterans administration center, Fort Harrison, Montana, as ceded by Public Law 91-45; 83 Stat. 48, which was approved July 19, 1969, and made effective upon acceptance of the cession by the state of Montana.

History: **En. Sec. 1, Ch. 157, L. 1971; R.C.M. 1947, 83-114.**

2-1-213. Acceptance of concurrent jurisdiction over Big Hole national battlefield. The state of Montana accepts the retrocession in Public Law 88-24, which was approved May 17, 1963, and made effective upon acceptance of the retrocession by the state of Montana of such jurisdiction as had been ceded by this state to the United States over the lands within the boundaries of the Big Hole national battlefield. This state recognizes the reservation in the United States of concurrent legislative jurisdiction over such lands.

History: **En. 83-115 by Sec. 1, Ch. 125, L. 1977; R.C.M. 1947, 83-115.**

2-1-214. Concurrent jurisdiction of the United States over certain lands dedicated to national park purposes. (1) Concurrent jurisdiction over crimes and offenses under the laws of the state is ceded to the United States over and within all the lands dedicated to national park purposes in the following tracts:

(a) Big Horn Canyon;
(b) Grant-Kohrs national historic site;
(c) Big Hole national battlefield; and
(d) Fort Union trading post.

(2) The concurrent jurisdiction ceded by subsection (1) is vested upon acceptance by the United States by and through its appropriate officials and shall continue so long as the lands within the designated areas are dedicated to park purposes.

History: **En Sec. 1, Ch. 302, L. 1979.**

2-1-215. Acceptance of jurisdiction over federal lands. The consent of the state is hereby given to the retrocession of jurisdiction, either partially or wholly, by the United States of America over lands owned by the United States of America within the boundaries of Montana that are used for national park purposes. The governor is authorized to accept for the state retrocession of jurisdiction.

History: **En Sec. 2, Ch. 302, L. 1979.**

2-1-216. Filing of acceptance of jurisdiction over federal lands. (1) When the state receives written notification from the authorized official or agent of the United States of America that the United States desires or is willing to relinquish to the state jurisdiction, or a portion thereof, over certain lands owned by the United States within Montana that are used for national park purposes, the governor may accept relinquishment.

(2) After acceptance and approval by the governor, retrocession of jurisdiction becomes effective upon filing of the original acceptance with the secretary of state of Montana.

History: En Sec. 3, Ch. 302, L. 1979.

Part 3

Jurisdiction on Indian Lands

2-1-301. Assumption of criminal jurisdiction of Flathead Indian country. The state of Montana hereby obligates and binds itself to assume, as herein provided, criminal jurisdiction over Indians and Indian territory of the Flathead Indian reservation and country within the state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd congress, 1st session).

History: En. Sec. 1, Ch. 81, L. 1963; R.C.M. 1947, 83-801.

2-1-302. Resolution of Indian tribes requesting state jurisdiction — governor's proclamation — consent of county commissioners. (1) Whenever the governor of this state receives from the tribal council or other governing body of the Confederated Salish and Kootenai Indian tribes or any other community, band, or group of Indians in this state, a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction, or both, of the state to the extent authorized by federal law and regulation, he shall issue within 60 days a proclamation to the effect that such jurisdiction applies to those Indians and their territory or reservation in accordance with the provisions of this part.

(2) The governor may not issue the proclamation until the resolution has been approved in the manner provided for by the charter, constitution, or other fundamental law of the tribe or tribes, if said document provides for such approval, and there has been first obtained the consent of the board of county commissioners of each county which encompasses any portion of the reservation of such tribe or tribes.

History: En. Sec. 2, Ch. 81, L. 1963; R.C.M. 1947, 83-802; amd. Sec. 2, Ch. 184, L. 1979.

2-1-303. Date of assumption of jurisdiction — application of state law in Indian country. Sixty days from the date of issuance of the proclamation of the governor as provided for by 2-1-302, the state of Montana shall assume jurisdiction over offenses committed by or against Indians in the lands prescribed in the proclamation to the same extent that this state has jurisdiction over offenses committed elsewhere within this state. The criminal and/or civil laws of this state shall have the same force and effect within such lands as they have elsewhere within this state.

History: En. Sec. 3, Ch. 81, L. 1963; R.C.M. 1947, 83-803.

2-1-304. Rights, privileges, and immunities reserved to Indians. Nothing in this part shall:

(1) authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States;

(2) authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto;

(3) confer jurisdiction upon the state of Montana to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein; or

(4) deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, statute, or executive order with respect to hunting, trapping, fishing, or the control, licensing, or regulation thereof.

History: En. Sec. 4, Ch. 81, L. 1963; R.C.M. 1947, 83-804.

2-1-305. Indian culture protected. Nothing in this part shall deprive the Indian tribe, band, or community from carrying on its age-old tribal dances, feasting, or customary Indian celebrations or in any way try to destroy the Indian culture.

History: En. Sec. 5, Ch. 81, L. 1963; R.C.M. 1947, 83-805.

2-1-306. Withdrawal of consent to state jurisdiction. Any Indian tribe, community, band, or group of Indians that may consent to come within the provisions of this part may within 2 years from the date of the governor's proclamation withdraw their consent to be subject to the criminal and/or civil jurisdiction of the state of Montana, by appropriate resolution, and within 60 days after receipt of such resolution, the governor shall issue a proclamation to that effect.

History: En. Sec. 6, Ch. 81, L. 1963; R.C.M. 1947, 83-806.

2-1-307. Service of process. All legal process of the state, both civil and criminal, may be served upon persons and property found on any Indian reservation in all cases where the United States has not exclusive jurisdiction.

History: En. Sec. 41, Pol. C. 1895; re-en. Sec. 22, Rev. C. 1907; re-en. Sec. 21, R.C.M. 1921; re-en. Sec. 21, R.C.M. 1935; R.C.M. 1947, 83-103(part).

CHAPTER 2

STANDARDS OF CONDUCT

Part 1 — Code of Ethics

Section

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Part 1

Code of Ethics

2-2-101. Statement of purpose. The purpose of this part is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. This code recognizes distinctions between legislators, other officers and employees of state government, and officers and employees of local government and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category. The provisions of this part recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

History: **En. 59-1701 by Sec. 1, Ch. 569, L. 1977; R.C.M. 1947, 59-1701.**

2-2-102. Definitions. As used in this part, the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

(3) "Employee" means any temporary or permanent employee of the state or any subdivision thereof or member of the judiciary, including a member of a board, commission, or committee except a legislator and an employee under contract to the state.

(4) "Financial interest" means an interest held by an individual, his spouse, or minor children which is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real or personal property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

(6) "Public officer" includes any state officer except a legislator or member of the judiciary or any elected officer of any subdivision of the state.

(7) "State agency" includes the state; the legislature and its committees; all executive departments, boards, commissions, committees, bureaus, and offices; the university system; and all independent commissions and other establishments of the state government except the courts.

(8) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102.

History: En. 59-1702 by Sec. 2, Ch. 569, L. 1977; R.C.M. 1947, 59-1702.

2-2-103. Public trust. (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, legislators, and employees. A public officer, legislator, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, legislator, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property, is liable to a beneficiary under 72-20-203(2), and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the aggrieved agency.

(3) The following sections set forth various rules of conduct, the transgression of any of which is, as such, a violation of fiduciary duty, and various ethical principles, the transgression of any of which is not, as such, a violation of fiduciary duty.

History: En. 59-1703 by Sec. 3, Ch. 569, L. 1977; R.C.M. 1947, 59-1703.

2-2-104. Rules of conduct for all public officers, legislators, and employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty. A public officer, legislator, or employee may not:

(a) disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties; or

(ii) which he knows or which a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken.

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of such services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

History: En. 59-1704 by Sec. 4, Ch. 569, L. 1977; R.C.M. 1947, 59-1704.

2-2-105. Ethical principles for public officers and employees. (1) The principles in this section are intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in state or local government.

(2) A public officer or employee should not acquire an interest in any business or undertaking which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by his agency.

(3) A public officer or employee should not, within the months following the voluntary termination of his office or employment, obtain employment in which he will take direct advantage, unavailable to others, of matters with which he was directly involved during his term or employment. These matters are rules, other than rules of general application, which he actively helped to formulate and applications, claims, or contested cases in the consideration of which he was an active participant.

(4) A public officer or employee should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a competing firm or undertaking.

History: En. 59-1709 by Sec. 9, Ch. 569, L. 1977; R.C.M. 1947, 59-1709.

2-2-106 through 2-2-110 reserved.

2-2-111. Rules of conduct for legislators. Proof of commission of any act enumerated in this section is proof that the legislator committing the act has breached his fiduciary duty. A legislator may not:

(1) accept a fee, contingent fee, or any other compensation, except his official compensation provided by statute, for promoting or opposing the passage of legislation;

(2) seek other employment for himself or solicit a contract for his services by the use of his office.

History: En. 59-1705 by Sec. 5, Ch. 569, L. 1977; R.C.M. 1947, 59-1705.

2-2-112. Ethical principles for legislators. (1) The principles in this section are intended only as guides to legislator conduct and do not constitute violations as such of the public trust of legislative office.

(2) When a legislator must take official action on a legislative matter as to which he has a conflict created by a personal or financial interest which would be directly and substantially affected by the legislative matter, he should consider disclosing or eliminating the interest creating the conflict or abstaining from the official action. In making his decision, he should further consider:

(a) whether the conflict impedes his independence of judgment;

(b) the effect of his participation on public confidence in the integrity of the legislature; and

(c) whether his participation is likely to have any significant effect on the disposition of the matter.

(3) A conflict situation does not arise from legislation affecting the entire membership of a class.

(4) If a legislator elects to disclose the interest creating the conflict, he shall do so as provided in the joint rules of the legislature.

History: En. 59-1708 by Sec. 8, Ch. 569, L. 1977; R.C.M. 1947, 59-1708.

2-2-113 through 2-2-120 reserved.

2-2-121. Rules of conduct for state officers and state employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) A state officer or a state employee may not:

(a) use state time, facilities, or equipment for his private business purposes;

(b) engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from his agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any state agency; or

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

(3) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding subsection (2)(e) if his participation is necessary to the administration of a statute and if he complies with the voluntary disclosure procedures under 2-2-131.

(4) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless he is also a full-time state employee.

History: En. 59-1706 by Sec. 6, Ch. 569, L. 1977; R.C.M. 1947, 59-1706.

2-2-122 through 2-2-124 reserved.

2-2-125. Rules of conduct for local government officers and employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) An officer or employee of local government may not:

(a) engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties; or

(b) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

(3) A member of the governing body of a local government may perform an official act notwithstanding this section when his participation is necessary to obtain a quorum or otherwise enable the body to act, if he complies with the voluntary disclosure procedures under 2-2-131.

History: En. 59-1707 by Sec. 7, Ch. 569, L. 1977; R.C.M. 1947, 59-1707.

2-2-126 through 2-2-130 reserved.

2-2-131. Voluntary disclosure. A public officer or employee may, prior to acting in a manner which may impinge on his fiduciary duty, disclose the nature of his private interest which creates the conflict. He shall make the disclosure in writing to the secretary of state, listing the amount of his financial interest, if any, the purpose and duration of his services rendered, if any, and the compensation received for the services or such other information as is necessary to describe his interest. If he then performs the official act involved, he shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act.

History: En. 59-1710 by Sec. 10, Ch. 569, L. 1977; R.C.M. 1947, 59-1710.

2-2-132. Powers of the secretary of state. The secretary of state may:

(1) issue advisory opinions with such deletions as are necessary to protect the identity of the requesting party or the party about whom the opinion is written;

(2) keep and permit reasonable public access to voluntary disclosure statements;

(3) make rules for the conduct of his affairs under this part.

History: En. 59-1711 by Sec. 11, Ch. 569, L. 1977; R.C.M. 1947, 59-1711.

Part 2

Proscribed Acts Related to Contracts and Claims

2-2-201. Public officers, employees, and former employees not to have interest in contracts. Members of the legislature, state, county, city, town, or township officers or any deputy or employee thereof must not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees. A former employee may not, within 6 months following the termination of his employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which he was directly involved during his employment. In this section the term:

(1) "be interested in" does not include holding a minority interest in a corporation;

(2) "contract" does not include:

(a) contracts awarded to the lowest responsible bidder based on competitive bidding procedures;

(b) merchandise sold to the highest bidder at public auctions;

(c) investments or deposits in financial institutions which are in the business of loaning or receiving money.

History: **En. Sec. 1020, Pol. C. 1895; re-en. Sec. 368, Rev. C. 1907; re-en. Sec. 444, R.C.M. 1921; Cal. Pol. C. Sec. 920; re-en. Sec. 444, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1973; R.C.M. 1947, 59-501; amd. Sec. 1, Ch. 377, L. 1979.**

2-2-202. Public officers not to have interest in sales or purchases. State, county, town, township, and city officers must not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

History: **En. Sec. 1021, Pol. C. 1895; re-en. Sec. 369, Rev. C. 1907; re-en. Sec. 445, R.C.M. 1921; Cal. Pol. C. Sec. 921; re-en. Sec. 445, R.C.M. 1935; R.C.M. 1947, 59-502.**

2-2-203. Void contracts. Every contract made in violation of any of the provisions of 2-2-201 or 2-2-202 may be avoided at the instance of any party except the officer interested therein.

History: **En. Sec. 1022, Pol. C. 1895; re-en. Sec. 370, Rev. C. 1907; re-en. Sec. 446, R.C.M. 1921; Cal. Pol. C. Sec. 922; re-en. Sec. 446, R.C.M. 1935; R.C.M. 1947, 59-503.**

2-2-204. Dealings in warrants and other claims prohibited. The state officers, the several county, city, town, and township officers of this state, their deputies and clerks, are prohibited from purchasing or selling or in any manner receiving to their own use or benefit or to the use or benefit of any person or persons whatever any state, county, or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state or any county, city, town, or township thereof except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy, clerk, and evidences of the funded indebtedness of such state, county, city, township, town, or corporation.

History: **En. Sec. 1023, Pol. C. 1895; re-en. Sec. 371, Rev. C. 1907; re-en. Sec. 447, R.C.M. 1921; Cal. Pol. C. Sec. 923; re-en. Sec. 447, R.C.M. 1935; R.C.M. 1947, 59-504.**

2-2-205. Affidavit to be required by auditing officers. Every officer whose duty it is to audit and allow the accounts of other state, county, city, township, or town officers must, before allowing such accounts, require each of such officers to make and file with him an affidavit that he has not violated any of the provisions of this part.

History: **En. Sec. 1024, Pol. C. 1895; re-en. Sec. 372, Rev. C. 1907; re-en. Sec. 448, R.C.M. 1921; Cal. Pol. C. Sec. 924; re-en. Sec. 448, R.C.M. 1935; R.C.M. 1947, 59-505.**

2-2-206. Officers not to pay illegal warrant. Officers charged with the disbursement of public moneys must not pay any warrant or other evidence of indebtedness against the state, county, city, town, or township when the same has been purchased, sold, received, or transferred contrary to any of the provisions of this part.

History: **En. Sec. 1025, Pol. C. 1895; re-en. Sec. 373, Rev. C. 1907; re-en. Sec. 449, R.C.M. 1921; Cal. Pol. C. Sec. 925; re-en. Sec. 449, R.C.M. 1935; R.C.M. 1947, 59-506.**

2-2-207. Settlements to be withheld on affidavit. (1) Every officer charged with the disbursement of public moneys who is informed by affidavit establishing probable cause that any officer whose account is about to be settled, audited, or paid by him has violated any of the provisions of this part must suspend such settlement or payment and cause such officer to be prosecuted for such violation by the county attorney of the county.

(2) In case there be judgment for the defendant upon such prosecution, the proper officer may proceed to settle, audit, or pay such account as if no such affidavit had been filed.

History: En. Sec. 1026, Pol. C. 1895; re-en. Sec. 374, Rev. C. 1907; re-en. Sec. 450, R.C.M. 1921; Cal. Pol. C. Sec. 926; re-en. Sec. 450, R.C.M. 1935; R.C.M. 1947, 59-507.

Part 3

Nepotism

2-2-301. Nepotism defined. Nepotism is the bestowal of political patronage by reason of relationship rather than of merit.

History: En. Sec. 1, Ch. 12, L. 1933; re-en. Sec. 456.1, R.C.M. 1935; R.C.M. 1947, 59-518.

2-2-302. Appointment of relative to office of trust or emolument unlawful. (1) It shall be unlawful for any person or any member of any board, bureau, or commission or employee at the head of any department of this state or any political subdivision thereof to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

(2) The provisions of this section and 2-2-303 shall not apply to sheriffs in the appointment of persons as cooks and/or attendants.

History: En. Sec. 2, Ch. 12, L. 1933; re-en. Sec. 456.2, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1955; amd. Sec. 27, Ch. 535, L. 1975; R.C.M. 1947, 59-519(part).

2-2-303. Agreements to appoint relative to office unlawful. It shall further be unlawful for any person or any member of any board, bureau, or commission or employee of any department of this state or any political subdivision thereof to enter into any agreement or any promise with other persons or any members of any boards, bureaus, or commissions or employees of any department of this state or any of its political subdivisions thereof to appoint to any position of trust or emolument any person or persons related to them or connected with them by consanguinity within the fourth degree or by affinity within the second degree.

History: En. Sec. 2, Ch. 12, L. 1933; re-en. Sec. 456.2, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1955; amd. Sec. 27, Ch. 535, L. 1975; R.C.M. 1947, 59-519(part).

2-2-304. Penalty for violation of nepotism law. Any public officer or employee or any member of any board, bureau, or commission of this state or any political subdivision thereof who shall, by virtue of his office, have the right to make or appoint any person to render services to this state or any subdivision thereof and who shall make or appoint to such services or enter into any agreement or promise with any other person or employee or any member of any board, bureau, or commission of any other department of this state or any of its subdivisions to appoint to any position any person or persons related to him or them or connected with him or them by consanguinity within the fourth degree or by affinity within the second degree shall thereby be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not less than $50 or more than $1,000 or by imprisonment in the county jail for not less than 6 months or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 12, L. 1933; re-en. Sec. 456.3, R.C.M. 1935; R.C.M. 1947, 59-520.

CHAPTER 3

PUBLIC PARTICIPATION IN GOVERNMENTAL OPERATIONS

Part 1 — Notice and Opportunity to be Heard

Section
2-3-101. Legislative intent.
2-3-102. Definitions.
2-3-103. Public participation — governor to insure guidelines adopted.
2-3-104. Requirements for compliance with notice provisions.
2-3-105. Supplemental notice by radio or television.
2-3-106. Period for which copy retained.
2-3-107. Proof of publication by broadcast.
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2-3-111. Opportunity to submit views.
2-3-112. Exceptions.
2-3-113. Declaratory rulings to be published.
2-3-114. Enforcement.

Part 2 — Open Meetings

2-3-201. Legislative intent — liberal construction.
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2-3-212. Minutes of meetings — public inspection.
2-3-213. Voidability.
Sections 2-3-214 through 2-3-220 reserved.
2-3-221. Costs to plaintiff in certain actions to enforce constitutional right to know.

Part 1

Notice and Opportunity to be Heard

2-3-101. Legislative intent. The legislature finds and declares pursuant to the mandate of Article II, section 8, of the 1972 Montana constitution that legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency.

History: En. 82-4226 by Sec. 1, Ch. 491, L. 1975; R.C.M. 1947, 82-4226.

2-3-102. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts except:

(a) the legislature and any branch, committee, or officer thereof;

(b) the judicial branches and any committee or officer thereof;

(c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or

(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) "Rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or

(b) declaratory rulings as to the applicability of any statutory provision or of any rule.

(3) "Agency action" means the whole or a part of the adoption of an agency rule, the issuance of a license or order, the award of a contract, or the equivalent or denial thereof.

History: En. 82-4227 by Sec. 2, Ch. 491, L. 1975; amd. Sec. 23, Ch. 285, L. 1977; amd. Sec. 1, Ch. 452, L. 1977; R.C.M. 1947, 82-4227(part); amd. Sec. 1, Ch. 243, L. 1979.

2-3-103. Public participation — governor to insure guidelines adopted. (1) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures shall assure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public.

(2) The governor shall insure that each board, bureau, commission, department, authority, agency, or officer of the state adopts coordinated rules for its programs, which guidelines shall provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1) of this section. These guidelines shall be adopted as rules and published in a manner which may be provided to a member of the public upon request.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(1), (5).

2-3-104. Requirements for compliance with notice provisions. An agency shall be considered to have complied with the notice provisions of 2-3-103 if:

(1) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 75, chapter 1;

(2) a proceeding is held as required by the Montana Administrative Procedure Act;

(3) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or

(4) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or

advertisement concerning the decision sufficiently prior to a final decision to permit public comment on the matter.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(2).

2-3-105. Supplemental notice by radio or television. (1) Any official of the state or any of its political subdivisions who is required by law to publish any notice required by law may supplement such publication by a radio or television broadcast of a summary of such notice or by both of such broadcasts when in his judgment the public interest will be served.

(2) The summary of such notice shall only be read with no reference to any person by name then a candidate for political office.

(3) Such announcements shall be made only by duly employed personnel of the station from which such broadcast emanates.

(4) Announcements by political subdivisions may be made only by stations situated within the county of origin of the legal notice unless no broadcast station exists in such county, in which case announcements may be made by a station or stations situated in any county other than the county of origin of the legal notice.

History: En. Sec. 1, Ch. 149, L. 1963; R.C.M. 1947, 19-201.

2-3-106. Period for which copy retained. Each radio or television station broadcasting any summary of a legal notice shall for a period of 6 months subsequent to such broadcast retain at its office a copy or transcription of the text of the summary as actually broadcast, which shall be available for public inspection.

History: En. Sec. 2, Ch. 149, L. 1963; R.C.M. 1947, 19-202.

2-3-107. Proof of publication by broadcast. Proof of publication of a summary of any notice by radio or television broadcast shall be by affidavit of the manager, an assistant manager, or a program director of the radio or television station broadcasting the same.

History: En. Sec. 3, Ch. 149, L. 1963; R.C.M. 1947, 19-203.

2-3-108 through 2-3-110 reserved.

2-3-111. Opportunity to submit views. Procedures for assisting public participation shall include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(3).

2-3-112. Exceptions. The provisions of 2-3-103 and 2-3-111 do not apply to:

(1) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;

(2) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or

(3) a decision involving no more than a ministerial act.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(4).

2-3-113. Declaratory rulings to be published. The declaratory rulings of any board, bureau, commission, department, authority, agency, or officer of the state which is not subject to the Montana Administrative Procedure Act shall be published and be subject to judicial review as provided under 2-4-623(6) and 2-4-501, respectively.

History: En. 82-4227 by Sec. 2, Ch. 491, L. 1975; amd. Sec. 23, Ch. 285, L. 1977; amd. Sec. 1, Ch. 452, L. 1977; R.C.M. 1947, 82-4227(part); amd. Sec. 3, Ch. 184, L. 1979.

2-3-114. Enforcement. The district courts of the state have jurisdiction to set aside an agency decision under this part upon petition made within 30 days of the date of the decision of any person whose rights have been prejudiced.

History: En. 82-4229 by Sec. 4, Ch. 491, L. 1975; amd. Sec. 25, Ch. 285, L. 1977; R.C.M. 1947, 82-4229.

Part 2

Open Meetings

2-3-201. Legislative intent — liberal construction. The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed.

History: En. Sec. 1, Ch. 159, L. 1963; R.C.M. 1947, 82-3401.

2-3-202. Meeting defined. As used in this part, "meeting" means the convening of a quorum of the constituent membership of a public agency, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

History: En. 82-3404 by Sec. 2, Ch. 567, L. 1977; R.C.M. 1947, 82-3404.

2-3-203. Meetings of public agencies to be open to public — exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds shall be open to the public.

(2) Provided, however, the presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting shall be open.

(3) However, a meeting may be closed to discuss a strategy to be followed with respect to collective bargaining or litigation when an open meeting

would have a detrimental effect on the bargaining or litigating position of the public agency.

(4) Any committee or subcommittee appointed by a public body for the purpose of conducting business which is within the jurisdiction of that agency shall be subject to the requirements of this section.

History: En. Sec. 2, Ch. 159, L. 1963; amd. Sec. 1, Ch. 474, L. 1975; amd. Sec. 1, Ch. 567, L. 1977; R.C.M. 1947, 82-3402; amd. Sec. 1, Ch. 380, L. 1979.

2-3-204 through 2-3-210 reserved.

2-3-211. Recording. Accredited press representatives may not be excluded from any open meeting under this part and may not be prohibited from taking photographs, televising, or recording such meetings. The presiding officer may assure that such activities do not interfere with the conduct of the meeting.

History: En. 82-3405 by Sec. 4, Ch. 567, L. 1977; R.C.M. 1947, 82-3405.

2-3-212. Minutes of meetings — public inspection. (1) Appropriate minutes of all meetings required by 2-3-203 to be open shall be kept and shall be available for inspection by the public.

(2) Such minutes shall include without limitation:

(a) date, time, and place of meeting;

(b) a list of the individual members of the public body, agency, or organization in attendance;

(c) the substance of all matters proposed, discussed, or decided; and

(d) at the request of any member, a record by individual members of any votes taken.

History: En. Sec. 3, Ch. 159, L. 1963; amd. Sec. 3, Ch. 567, L. 1977; R.C.M. 1947, 82-3403.

2-3-213. Voidability. Any decision made in violation of 2-3-203 may be declared void by a district court having jurisdiction. A suit to void any such decision must be commenced within 30 days of the decision.

History: En. 82-3406 by Sec. 5, Ch. 567, L. 1977; R.C.M. 1947, 82-3406.

2-3-214 through 2-3-220 reserved.

2-3-221. Costs to plaintiff in certain actions to enforce constitutional right to know. A plaintiff who prevails in an action brought in district court to enforce his rights under Article II, section 9, of the Montana constitution may be awarded his costs and reasonable attorneys' fees.

History: En. 93-8632 by Sec. 1, Ch. 493, L. 1975; R.C.M. 1947, 93-8632.

CHAPTER 4

ADMINISTRATIVE PROCEDURE ACT

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2-4-312. Publication and arrangement of register.
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2-4-613. Ex parte consultations.
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2-4-622. When hearings officer unavailable for decision.
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Sections 2-4-705 through 2-4-710 reserved.
2-4-711. Appeals — staying agency decision.

Part 1

General Provisions

2-4-101. Short title. This chapter shall be known and may be cited as the "Montana Administrative Procedure Act".

History: En. Sec. 1, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 285, L. 1977; R.C.M. 1947, 82-4201.

2-4-102. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter 14.

(2) "Agency" means any agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(a) the state board of pardons, except that the board shall be subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules shall be published in the administrative rules of Montana and Montana administrative register;

(b) the supervision and administration of any penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(c) the board of regents and the Montana university system;

(d) the financing, construction, and maintenance of public works.

(3) "ARM" means the administrative rules of Montana.

(4) "Contested case" means any proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(7) "Party" means any person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but nothing herein

shall be construed to prevent an agency from admitting any person as a party for limited purposes.

(8) "Person" means any individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(9) "Register" means the Montana administrative register.

(10) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of such rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of such rules and rules adopted annually relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of such rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that such rules shall be filed in accordance with 2-4-306 and shall be published in the administrative rules of Montana.

(11) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. Such interpretation lacks the force of law.

History: (1), (3), (9)En. by Code Commissioner, 1979; (2), (4) thru (8), (10), (11)En. Sec. 2, Ch. 2, Ex. L. 1971; amd. Sec. 2, Ch. 285, L. 1977; Sec. 82-4202, R.C.M. 1947; R.C.M. 1947, 82-4202; amd. Sec. 4, Ch. 184, L. 1979; amd. Sec. 2, Ch. 243, L. 1979.

2-4-103. Rules and statements to be made available to public. (1) Each agency shall:

(a) make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions;

(b) upon request of any person, provide a copy of any rule.

(2) Unless otherwise provided by statute, an agency may require the payment of the cost of providing such copies.

(3) No agency rule is valid or effective against any person or party whose rights have been substantially prejudiced by an agency's failure to comply with the public inspection requirement herein.

History: En. Sec. 3, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 240, L. 1974; amd. Sec. 3, Ch. 285, L. 1977; R.C.M. 1947, 82-4203(1)(c), (1)(d), (2); amd. Sec. 3, Ch. 243, L. 1979.

2-4-104. Subpoenas and enforcement — compelling testimony. (1) An agency conducting any proceeding subject to this chapter shall have the power to require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers, documents, and other objects as may be necessary and proper for the purposes of the proceeding. In furtherance of this power, an agency upon its own motion may and, upon request of any party appearing in a contested case, shall issue subpoenas for witnesses or subpoenas duces tecum. The method for service of subpoenas, witness fees, and mileage shall be the same as required in civil actions in the district courts of the state. Except as otherwise provided by statute, witness fees and mileage shall be paid by the party at whose request the subpoena was issued.

(2) In case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a proceeding before the agency, the agency may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. If the agency fails or refuses to seek enforcement of a subpoena issued at the request of a party or to compel the giving of testimony considered material by a party, the party may make such application. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of such order shall be punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district courts. If another method of subpoena enforcement or compelling testimony is provided by statute, it may be used as an alternative to the method provided for in this section.

History: En. Sec. 20, Ch. 2, Ex. L. 1971; amd. Sec. 19, Ch. 285, L. 1977; R.C.M. 1947, 82-4220(1), (2).

2-4-105. Representation by counsel. Any person compelled to appear in person or who voluntarily appears before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel. In a proceeding before an agency, every party shall be accorded the right to appear in person or by or with counsel but this chapter shall not be construed as requiring an agency to furnish counsel to any such person.

History: En. Sec. 21, Ch. 2, Ex. L. 1971; amd. Sec. 20, Ch. 285, L. 1977; R.C.M. 1947, 82-4221.

2-4-106. Service. Except where a statute expressly provides to the contrary, service in all agency proceedings subject to the provisions of this chapter and in proceedings for judicial review thereof shall be as prescribed for civil actions in the district courts.

History: En. Sec. 22, Ch. 2, Ex. L. 1971; amd. Sec. 21, Ch. 285, L. 1977; R.C.M. 1947, 82-4222.

2-4-107. Construction and effect. Nothing in this chapter shall be considered to limit or repeal requirements imposed by statute or otherwise recognized law. No subsequent legislation shall be considered to supersede or modify any provision of this chapter, whether by implication or otherwise, except to the extent that such legislation shall do so expressly.

History: En. Sec. 23, Ch. 2, Ex. L. 1971; amd. Sec. 22, Ch. 285, L. 1977; R.C.M. 1947, 82-4223.

Part 2

Organizational and Procedural Rules

2-4-201. Rules describing agency organization and procedures. In addition to other rulemaking requirements imposed by law, each agency shall:

(1) adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests. The notice and hearing requirements contained in 2-4-302 do not apply to adoption of a rule relating to a description of its organization.

(2) adopt rules of practice, not inconsistent with statutory provisions, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency.

History: En. Sec. 3, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 240, L. 1974; amd. Sec. 3, Ch. 285, L. 1977; R.C.M. 1947, 82-4203(1)(a), (1)(b).

2-4-202. Model rules. (1) The attorney general shall prepare a model form for a rule describing the organization of agencies and model rules of practice for agencies to use as a guide in fulfilling the requirements of 2-4-201. The attorney general shall add to, amend, or revise the model rules from time to time as he considers necessary for the proper guidance of agencies.

(2) The model rules and additions, amendments, or revisions thereto shall be appropriate for the use of as many agencies as is practicable and shall be filed with the secretary of state and provided to any agency upon request. The adoption by an agency of all or part of the model rules does not relieve the agency from following the rulemaking procedures required by this chapter.

History: En. Sec. 3, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 240, L. 1974; amd. Sec. 3, Ch. 285, L. 1977; R.C.M. 1947, 82-4203(3).

Part 3

Adoption and Publication of Rules

2-4-301. Authority to adopt not conferred. Except as provided in part 2, nothing in this chapter confers authority upon or augments the authority of any state agency to adopt, administer, or enforce any rule.

History: En. 82-4204.1 by Sec. 9, Ch. 285, L. 1977; R.C.M. 1947, 82-4204.1(part).

2-4-302. Notice, hearing, and submission of views. (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views thereon.

(2) The notice shall be filed with the secretary of state for publication in the register as provided in 2-4-312 and mailed to persons who have made

timely requests to the agency for advance notice of its rulemaking proceedings. The notice shall be published and mailed at least 30 days in advance of the agency's intended action.

(3) If any statute provides for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained herein. However, in no case may the notice period be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and 28 days from the day of notice to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for oral hearing shall be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, or by an association having not less than 25 members who will be directly affected.

(5) An agency may continue a hearing date for cause. Contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing herein alters that requirement.

History: En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(part); amd. Sec. 4, Ch. 243, L. 1979.

2-4-303. Emergency rules. (1) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, but the adoption of an identical rule under 2-4-302 is not precluded.

(2) The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to judicial review.

History: En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(2); amd. Sec. 5, Ch. 243, L. 1979.

Compiler's Comments

Other act to prevail. Sec. 15, Ch. 243, L. 1979, provided: "Section 5 is intended to correct an apparent oversight creating an inconsistency in relation to notice periods. If 2-4-303(1) is amended by another act to change '20 days' to some period other than '30 days', such other act prevails."

2-4-304. Informal conferences and committees. (1) An agency may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons with respect to contemplated rulemaking.

(2) An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rulemaking. The powers of the committees shall be advisory only.

(3) Nothing herein shall relieve the agency from following rulemaking procedures required by this chapter.

History: En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(4).

2-4-305. Requisites for validity — authority and statement of reasons. (1) The agency shall consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. When no written or oral submissions have been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and the portion which is amplification of the language.

(3) Each rule shall include a citation to the specific grant of rulemaking authority pursuant to which it or any part thereof is adopted. In addition, each rule shall include a citation to the specific section or sections in the Montana Code Annotated which the rule purports to implement.

(4) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(5) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, no rule adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

(6) No rule is valid unless adopted in substantial compliance with 2-4-302 or 2-4-303 and this section and unless notice of adoption thereof is published within 6 months of the publishing of notice of the proposed rule.

History: (1) thru (3), (6)En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; Sec. 82-4204, R.C.M. 1947; (4), (5)En. 82-4204.1 by Sec. 9, Ch. 285, L. 1977; Sec. 82-4204.1, R.C.M. 1947; R.C.M. 1947, 82-4204(part), 82-4204.1(part); amd. Sec. 6, Ch. 243, L. 1979.

2-4-306. Filing, format, and effective date — dissemination of emergency rules. (1) Each agency shall file with the secretary of state a copy of each rule adopted by it.

(2) The secretary of state may prescribe a format, style, and arrangement for notices and rules which are filed pursuant to this chapter and may refuse to accept the filing of any notice or rule that is not in compliance therewith. He shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, which shall be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing such copies.

(3) In the event that the administrative code committee has conducted a poll of the legislature in accordance with 2-4-403 or the revenue oversight committee has conducted a poll in accordance with 5-18-109, the results of the poll shall be published with the rule.

(4) Each rule shall become effective after publication in the register as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date shall be the effective date;

(b) subject to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon filing with the secretary of state or at a stated date following publication in the register if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them.

History: En. Sec. 5, Ch. 2, Ex. L. 1971; amd. Sec. 10, Ch. 285, L. 1977; amd. Sec. 2, Ch. 561, L. 1977; R.C.M. 1947, 82-4205(part); amd. Sec. 7, Ch. 243, L. 1979; amd. Sec. 12, Ch. 268, L. 1979.

2-4-307. Omissions from ARM or register. The secretary of state, with the consent of the adopting agency, may omit from ARM or the register any rule, either proposed or adopted, the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient if the rule merely incorporates by reference a model code, federal agency rule, or like publication made available on application to the agency and if ARM or the register contains a notice stating the citation and general subject matter of the omitted rule and stating how a copy may be obtained. A copy of the omitted matter shall be filed with the secretary of state.

History: En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(3); amd. Sec. 8, Ch. 243, L. 1979.

2-4-308 through 2-4-310 reserved.

2-4-311. Publication and arrangement of ARM. (1) The secretary of state shall compile, index, arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule, and publish all rules filed pursuant to this chapter in ARM. The secretary of state shall supplement, revise, and publish ARM or any part thereof as often as he considers necessary. He may include such editorial notes, cross-references, and other matter as he and the administrative code committee consider desirable or advantageous. He shall publish supplements to ARM at such times and in such form as he considers appropriate.

(2) ARM shall be arranged, indexed, and printed or duplicated in such manner as to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the secretary of state for the printing of as many copies of such separate publications as it may require. The cost of any such separate publications, determined in accordance with 2-4-313(4), shall be paid by the agency.

History: En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(part); amd. Sec. 9, Ch. 243, L. 1979.

2-4-312. Publication and arrangement of register. (1) The secretary of state shall publish in the register all notices, rules, and interpretations filed with him at least once a month or as directed by the administrative code committee but not more often than twice a month.

(2) He shall send the register without charge to each person listed in 2-4-313(1) and to each member of the legislature requesting the same. The cost, determined in accordance with 2-4-313(4), must be paid by appropriation from the general fund to the account within the revolving fund created

in 2-4-313(5). He shall send the register to any other person who pays a subscription fee which he shall fix in accordance with 2-4-313(4).

(3) The register must contain three sections, a rules section, a notice section, and an interpretation section:

(a) The rules section of the register must contain all rules filed since the compilation and publication of the preceding issue of the register, together with the concise statement of reasons required under 2-4-305(1).

(b) The notice section of the register must contain all rulemaking notices filed with the secretary of state pursuant to 2-4-302 since the compilation and publication of the preceding register.

(c) The interpretation section of the register must contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

(4) Each issue of the register must contain the issue number and date of the register and a table of contents. Each page of the register must contain the issue number and date of the register of which it is a part. The secretary of state may include with the register information to help the user in relating the register to ARM.

History: En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(2), (9); amd. Sec. 10, Ch. 243, L. 1979.

2-4-313. Distribution, costs, and maintenance. (1) The secretary of state shall distribute copies of ARM and supplements or revisions thereto, with costs paid as provided in 2-4-312(2), to the following:

(a) attorney general, one copy;

(b) clerk of each court of record of this state, one copy;

(c) clerk of United States district court for the district of Montana, one copy;

(d) clerk of United States court of appeals for the ninth circuit, one copy;

(e) each county clerk of this state, for use of county officials and the public, one copy, which may be maintained in a public library in the county seat or in the county offices;

(f) state law library, one copy;

(g) state historical society, one copy;

(h) each unit of the Montana university system, one copy;

(i) law library of the university of Montana, one copy;

(j) legislative council, three copies;

(k) library of congress, one copy;

(l) state library, one copy.

(2) The secretary of state, clerk of each court of record in the state, clerk of each county in the state, and the librarians for the state law library and the university of Montana law library shall maintain a complete, current set of ARM, including supplements or revisions thereto. Such persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall also maintain a permanent set of the registers.

(3) The secretary of state shall make copies of and subscriptions to ARM and supplements or revisions thereto and the register available to any person at prices fixed in accordance with subsection (4).

(4) The secretary of state, in consultation with the administrative code committee, shall determine the cost of supplying copies of ARM and supplements or revisions thereto and the register. The cost shall be the approximate cost of publication, including indexing, printing or duplicating, and

mailing, less fees charged agencies pursuant to subsection (6) and money appropriated for 2-4-312(2) and 2-4-313(1). However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of ARM and supplements or revisions thereto and the register.

(5) The secretary of state shall deposit all fees he collects in an account within the revolving fund created for paying the expenses of publication of ARM and the register.

(6) The secretary of state may charge agencies a filing fee for all material to be published in ARM or the register. He shall fix, in consultation with the administrative code committee, the fee to cover a portion of the costs of publication and mailing.

History: En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(5) thru (8), (10), (11); amd. Sec. 11, Ch. 243, L. 1979.

2-4-314. Biennial review by agencies. (1) Each agency shall at least biennially review its rules to determine if any new rule should be adopted or any existing rule should be modified or repealed.

(2) Prior to October 1, 1980, and prior to October 1 of each even-numbered year thereafter, each agency shall prepare and submit a report to the administrative code committee, in tabular or other form, indicating the agency's recommendations for legislation which will clarify existing grants of rulemaking authority and grant or eliminate rulemaking authority as necessary.

History: En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(6); amd. Sec. 4, Ch. 600, L. 1979.

Compiler's Comments

Effective date. Sec. 5, Ch. 600, L. 1979, provided: "This act is effective on passage and approval." Approved April 20, 1979.

2-4-315. Petition for adoption, amendment, or repeal of rules. An interested person or, when the legislature is not in session, a member of the legislature on behalf of an interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 60 days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

History: En. Sec. 7, Ch. 2, Ex. L. 1971; amd. Sec. 2, Ch. 236, L. 1974; amd. Sec. 12, Ch. 285, L. 1977; R.C.M. 1947, 82-4207.

2-4-316 through 2-4-320 reserved.

2-4-321. Definitions. As used in 2-4-321 through 2-4-323, the following definitions apply:

(1) "MCA" means Montana Code Annotated.

(2) "R.C.M." means Revised Codes of Montana, 1947.

(3) "ARM" means Administrative Rules of Montana.

(4) "Recodify" means to compile, rearrange, and prepare for publication. It includes without changing the meaning, effect, or intent of any rule:

(a) correcting or changing punctuation, capitalization, spelling, or grammatical construction and numbering as required by uniform literary and rule-drafting practice;

(b) substituting the appropriate MCA reference for reference to a section of, to a chapter of, or to an entire division of the R.C.M.;

(c) substituting the calendar date for "effective date", "hereafter", and similar terms;

(d) creating new titles, chapters, subchapters, sections, or other divisions of ARM;

(e) changing or creating catchlines to clearly reflect the content of the section;

(f) changing or inserting language as made necessary because of rearrangement;

(g) eliminating redundant words;

(h) when given direction or authority by a statute or another ARM section, correcting inaccurate or obsolete references to:

(i) titles of officers or agencies, such as those changed by executive reorganization statutes or subsequent interagency reorganizations;

(ii) other ARM or R.C.M. sections, such as those which have been repealed or repealed and replaced;

(i) changing inaccurate terminology to comply with statutory or rule definitions or short-form amendments;

(j) renumbering all ARM rules in the new three-part numbering system;

(k) eliminating unnecessary information in the history of ARM rules;

(l) reserving blocks of page numbers in ARM where growth has been consistent in the past or future growth is anticipated;

(m) providing the secretary of state with an "old to new" numbering table to be filed in front of each title;

(n) removing all repealed rules from ARM and listing them on the "old to new" numbering table;

(o) providing the secretary of state with a schedule of prospective chapter numbers and prospective page numbers, indicating the blocks of page numbers to be reserved in the agency's title, for the purpose of assisting the secretary of state in providing to ARM subscribers instructions for page removal and insertion of replacement pages.

History: En. Sec. 1, Ch. 600, L. 1979.

Compiler's Comments

Effective date. Sec. 5, Ch. 600, L. 1979, provided: "This act is effective on passage and approval." Approved April 20, 1979.

2-4-322. Agency duties. (1) Prior to July 1, 1980, agencies shall recodify all the rules of a general and permanent nature appearing in ARM, prepare them for publication, and refile them, in correct format and style, with the secretary of state.

(2) The secretary of state may set a schedule requiring an agency to recodify and refile its rules in chapter increments and prescribing the number of recodified pages to be submitted by each agency to the secretary of state at each scheduled date for replacement pages during the period beginning on April 20, 1979, and ending on July 1, 1980.

(3) Each agency shall submit a schedule to the secretary of state listing the chapter names, chapter numbers, and pages in its title that will be recodified and refiled to meet the requirements of subsection (2). The validity of the rules that are not refiled by the scheduled date is suspended on that date.

(4) Such suspended rules may be recodified and refiled with the secretary of state by the next scheduled replacement page date, and if so recodified and refiled, they become valid and effective on that date. If such suspended rules are not so recodified and refiled by that date, they are permanently invalid and may be revived only by fulfilling all requirements of the Montana Administrative Procedure Act relating to rulemaking in the same manner as new rules proposed for adoption.

(5) Prior to September 1, 1980, each agency shall prepare and submit to the secretary of state a report, which must be certified by the agency as the Official Report of the Recodification of Title .... The report must explain and indicate, in tabular or other form, all changes made during recodification, other than the changes listed in subsections (4)(a) through (4)(e) and (4)(j) through (4)(o) of 2-4-321, to clearly indicate the character of and rationale for each change. The report must be made available by the secretary of state on request and at a fee set by 2-6-103.

(6) The effective date of the recodification is the date of the replacement page issue.

History: En. Sec. 2, Ch. 600, L. 1979.

Compiler's Comments

Effective date. Sec. 5, Ch. 600, L. 1979, provided: "This act is effective on passage and approval." Approved April 20, 1979.

2-4-323. Effect of recodification and refiling. The rules in ARM that are recodified and refiled pursuant to 2-4-322 shall be given effect as a continuation of the rules in ARM as they exist on April 20, 1979, and not as a new adoption. A rule that is invalid, in whole or in part, on April 20, 1979, is not rendered valid by the process of recodification and refiling.

History: En. Sec. 3, Ch. 600, L. 1979.

Part 4

Legislative Review of Rules

2-4-401. Administrative code committee — staff, meetings, and compensation. (1) The administrative code committee may retain whatever employees, consultants, or counsel as are necessary to carry out the provisions of this chapter and to advise the publisher in relation to the text and legal authority of the material published in the register or ARM, within the limitations of legislative appropriations.

(2) The committee shall meet as often as may be necessary during and between legislative sessions.

(3) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

History: (1)En. 82-4203.4 by Sec. 3, Ch. 410, L. 1975; amd. Sec. 6, Ch. 285, L. 1977; Sec. 82-4203.4, R.C.M. 1947; (2), (3)En. 82-4203.3 by Sec. 2, Ch. 410, L. 1975; amd. Sec. 9, Ch. 103, L. 1977; Sec. 82-4203.3, R.C.M. 1947; R.C.M. 1947, 82-4203.3, 82-4203.4.

2-4-402. Powers of the committee — duty to review rules. (1) The committee shall review all proposed rules filed with the secretary of state.

(2) Rules proposed by the department of revenue may be reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act.

(3) The committee may:

(a) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the department proposing the rule when a rulemaking hearing will not be held in accordance with the provisions of 2-4-302 through 2-4-305;

(b) prepare recommendations for the adoption, amendment, or rejection of a rule and submit oral or written testimony at a rulemaking hearing;

(c) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(d) institute, intervene in, or otherwise participate in proceedings involving this chapter in the state and federal courts and administrative agencies;

(e) review the incidence and conduct of administrative proceedings under this chapter.

History: En. 82-4203.5 by Sec. 4, Ch. 410, L. 1975; amd. Sec. 7, Ch. 285, L. 1977; amd. Sec. 1, Ch. 561, L. 1977; R.C.M. 1947, 82-4203.5(1)(a) thru (1)(c); amd. Sec. 12, Ch. 243, L. 1979; amd. Sec. 11, Ch. 268, L. 1979.

2-4-403. Legislative intent — poll. (1) If the legislature is not in session, the committee may poll all members of the legislature by mail to determine whether a proposed rule is consistent with the intent of the legislature.

(2) Should 20 or more legislators object to any rule, the committee shall poll the members of the legislature.

(3) The poll shall include an opportunity for the agency to present a written justification for the rule to the members of the legislature.

History: En. 82-4203.5 by Sec. 4, Ch. 410, L. 1975; amd. Sec. 7, Ch. 285, L. 1977; amd. Sec. 1, Ch. 561, L. 1977; R.C.M. 1947, 82-4203.5(1)(d), (1)(e).

2-4-404. Evidentiary value of legislative poll. In the event that the administrative code committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll shall be admissible in any court proceeding involving the validity of the rule. In the event that the poll determines that a majority of the members of both houses find the proposed rule is contrary to the intent of the legislature, the rule shall be conclusively presumed to be contrary to the legislative intent in any court proceeding involving its validity.

History: En. Sec. 5, Ch. 2, Ex. L. 1971; amd. Sec. 10, Ch. 285, L. 1977; amd. Sec. 2, Ch. 561, L. 1977; R.C.M. 1947, 82-4205(part).

2-4-405. Estimate of economic impact. (1) Upon request of the administrative code committee, an agency shall prepare a statement of the estimated economic impact of the adoption, amendment, or repeal of a rule as proposed. The statement must include an estimate of:

(a) the cost to the state of administering and enforcing the rule;

(b) the aggregate cost of compliance to all persons affected; and

(c) any economic benefit of compliance to all persons affected.

(2) The statement must be filed with the secretary of state for publication in the register and mailed to persons who have requested advance notice of the agency's rulemaking proceedings. The statement must be published and mailed at least 20 days prior to the adoption, amendment, or repeal of the rule. If a hearing is held, it must be published 20 days prior to the hearing.

(3) If it is impossible to formulate such an estimate, the reasons for impossibility of formulation must be published instead of the estimate.

(4) This section does not apply to rulemaking pursuant to 2-4-303.

(5) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a statement required under this section.

History: **En. Sec. 1, Ch. 480, L. 1979.**

Compiler's Comments

Codification. Sec. 2, Ch. 480, L. 1979, provided: "The code commissioner shall codify section 1 in Title 2, chapter 4, part 3. Any reference in the Montana Code Annotated to Title 2, chapter 4, part 3, includes section 1."

2-4-406 through 2-4-410 reserved.

2-4-411. Report. The committee shall prepare a report to the legislature at least once each biennium and may recommend amendments to the Montana Administrative Procedure Act or the repeal, amendment, or adoption of a rule as provided in 2-4-412.

History: **En. 82-4203.5 by Sec. 4, Ch. 410, L. 1975; amd. Sec. 7, Ch. 285, L. 1977; amd. Sec. 1, Ch. 561, L. 1977; R.C.M. 1947, 82-4203.5(2).**

2-4-412. Legislative review of rules. (1) The legislature may, by joint resolution, repeal any rule in ARM. If a rule is repealed, the legislature shall in the joint resolution state its objections to the repealed rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the joint resolution. If the legislature does not repeal a rule filed with it before the adjournment of that regular session, the rule remains valid.

(2) The legislature may also, by joint resolution, direct a change to be made in any rule in ARM or direct the adoption of an additional rule. If a change in any rule or the adoption of an additional rule is directed to be made, the legislature shall in the joint resolution state the nature of the change or the additional rule to be made and its reasons therefor. The agency shall, in the manner provided in the Montana Administrative Procedure Act, adopt a new rule in accordance with the legislative direction.

(3) Rules made by agencies and changes in rules directed by the legislature under subsection (2) of this section shall conform and be pursuant to statutory authority.

History: **En. 82-4203.1 by Sec. 1, Ch. 239, L. 1973; amd. Sec. 1, Ch. 236, L. 1974; amd. Sec. 4, Ch. 285, L. 1977; R.C.M. 1947, 82-4203.1.**

Part 5

Judicial Notice and Declaratory Rulings

2-4-501. Declaratory rulings by agencies. Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. A copy of a declaratory ruling must be filed with the secretary of state for publication in the register. A declaratory ruling or the refusal to issue such a ruling shall be subject to judicial review in the same manner as decisions or orders in contested cases.

History: En. Sec. 18, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4218; amd. Sec. 13, Ch. 243, L. 1979.

2-4-502 through 2-4-504 reserved.

2-4-505. Judicial notice of rules. The courts shall take judicial notice of any rule filed and published under the provisions of this chapter.

History: En. Sec. 8, Ch. 2, Ex. L. 1971; amd. Sec. 13, Ch. 285, L. 1977; R.C.M. 1947, 82-4208.

2-4-506. Declaratory judgments on validity or application of rules. (1) A rule may be declared invalid or inapplicable in an action for declaratory judgment if it is found that the rule or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the plaintiff.

(2) A rule may also be declared invalid in such an action on the grounds that the rule was adopted with an arbitrary or capricious disregard for the purpose of authorizing statute, as evidenced by documented legislative intent.

(3) If the administrative code committee has objected to the adoption or amendment of a rule on the grounds set forth in subsection (2), the agency bears the burden, in any action brought under this section, of proving that its rule was not adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute.

(4) A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

(5) The action may be brought in the district court for the county in which the plaintiff resides or has his principal place of business or in which the agency maintains its principal office. The agency shall be made a party to the action.

History: En. Sec. 19, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 560, L. 1977; R.C.M. 1947, 82-4219; amd. Sec. 14, Ch. 243, L. 1979.

Part 6

Contested Cases

2-4-601. Notice. (1) In a contested case, all parties must be afforded an opportunity for hearing after reasonable notice.

(2) The notice must include:

(a) a statement of the time, place, and nature of the hearing;

(b) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(c) a reference to the particular sections of the statutes and rules involved;

(d) a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement must be furnished.

(e) a statement that a formal proceeding may be waived pursuant to 2-4-603.

History: En. Sec. 9, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(1), (2); amd. Sec. 1, Ch. 277, L. 1979.

2-4-602. Discovery. Each agency shall provide in its rules of practice for discovery prior to a contested case hearing.

History: En. Sec. 20, Ch. 2, Ex. L. 1971; amd. Sec. 19, Ch. 285, L. 1977; R.C.M. 1947, 82-4220(3).

2-4-603. Informal disposition and hearings — waiver of administrative proceedings. (1) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(2) Except as otherwise provided, parties to a contested case may jointly waive in writing a formal proceeding under this part. The parties may then utilize informal proceedings under 2-4-604. Parties to contested case proceedings held under Title 37 or under any other provision relating to licensure to pursue a profession or occupation may not waive formal proceedings.

(3) If a contested case does not involve a disputed issue of material fact, parties may jointly stipulate in writing to waive contested case proceedings and may directly petition the district court for judicial review pursuant to 2-4-702. The petition shall contain an agreed statement of facts and a statement of the legal issues or contentions of the parties upon which the court, together with the additions it may consider necessary to fully present the issues, may make its decision.

History: En. Sec. 9, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(4); amd. Sec. 2, Ch. 277, L. 1979.

2-4-604. Informal proceedings. (1) In proceedings under this section, the agency shall, in accordance with procedures adopted under 2-4-201:

(a) give affected persons or parties or their counsel an opportunity, at a convenient time and place, to present to the agency or hearing examiner:

(i) written or oral evidence in opposition to the agency's action or refusal to act;

(ii) a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction; or

(iii) other written or oral evidence relating to the contested case;

(b) if the objections of the persons or parties are overruled, provide a written explanation within 7 days.

(2) The record must consist of:

(a) the notice and summary of grounds of the opposition;

(b) evidence offered or considered;

(c) any objections and rulings thereon;

(d) all matters placed on the record after ex parte communication pursuant to 2-4-613;

(e) a recording of any hearing held, together with a statement of the substance of the evidence received or considered, the written or oral statements of the parties or other persons, and the proceedings. A party may object in writing to the statement or may order at his cost a transcription of the recording, or both. Objections shall become a part of the record.

(3) Agencies shall give effect to the rules of privilege recognized by law.

(4) In agency proceedings under this section, irrelevant, immaterial, or unduly repetitious evidence must be excluded but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not such evidence is admissible in a trial in the courts of Montana. Any part of the evidence may be received in written form, and all testimony of parties and witnesses must be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient in itself to support a finding unless it is admissible over objection in civil actions.

(5) A party may petition for review of an informal agency decision pursuant to part 7 of this chapter.

History: **En Sec. 3, Ch. 277, L. 1979.**

Compiler's Comments

Codification. Sec. 5, Ch. 277, L. 1979, provided: "Section 3 is intended to be codified as an integral part of Title 2, chapter 4, and the provisions contained in Title 2, chapter 4, apply to section 3."

2-4-605 through 2-4-610 reserved.

2-4-611. Hearing examiners — legal services unit — conduct of hearings — disqualification of hearing examiners and agency members. (1) An agency may appoint hearing examiners for the conduct of hearings in contested cases. A hearing examiner must be assigned with due regard to the expertise required for the particular matter.

(2) An agency may elect to request a hearing examiner from the legal assistance program within the attorney general's office or from another agency. If the request is honored, the time, date, and place of the hearing must be set by the agency, with the concurrence of the legal assistance program or the other agency.

(3) Agency members or hearing examiners presiding over hearings may administer oaths or affirmations; issue subpoenas pursuant to 2-4-104; provide for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for continued hearings and fixing the time for filing of briefs or other documents; and direct parties to appear and confer to consider simplification of the issues by consent of the parties.

(4) On the filing by a party, hearing examiner, or agency member in good faith of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearing examiner or agency member, the agency shall determine the matter as a part of the record and decision in the case. The agency may disqualify the hearing examiner or agency member and request another hearing examiner pursuant to subsection (2) or assign another hearing examiner from within the agency. The affidavit must state the facts and the reasons for the belief that the hearing examiner should be disqualified and must be filed not less than 10 days before the original date set for the hearing.

History: **En. Sec. 11, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4211(part); amd. Sec. 1, Ch. 467, L. 1979.**

2-4-612. Hearing — rules of evidence, cross-examination, judicial notice. (1) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(2) Except as otherwise provided by statute relating directly to an agency, agencies shall be bound by common law and statutory rules of evidence. Objections to evidentiary offers may be made and shall be noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(3) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(4) All testimony shall be given under oath or affirmation.

(5) A party shall have the right to conduct cross-examinations required for a full and true disclosure of facts, including the right to cross-examine the author of any document prepared by or on behalf of or for the use of the agency and offered in evidence.

(6) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data. They shall be afforded an opportunity to contest the material so noticed.

(7) The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

History: En. Secs. 9, 10, 11, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(3), 82-4210, 82-4211(part).

2-4-613. Ex parte consultations. Unless required for disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or to make findings of fact and conclusions of law in a contested case, after issuance of notice of hearing, shall not communicate with any party or his representative in connection with any issue of fact or law in such case except upon notice and opportunity for all parties to participate.

History: En. Sec. 14, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4214.

2-4-614. Record — transcription. (1) The record in a contested case shall include:

(a) all pleadings, motions, intermediate rulings;

(b) all evidence received or considered, including a stenographic record of oral proceedings when demanded by a party;

(c) a statement of matters officially noticed;

(d) questions and offers of proof, objections, and rulings thereon;

(e) proposed findings and exceptions;

(f) any decision, opinion, or report by the hearing examiner or agency member presiding at the hearing;

(g) all staff memoranda or data submitted to the hearing examiner or members of the agency as evidence in connection with their consideration of the case.

(2) The stenographic record of oral proceedings or any part thereof shall be transcribed on request of any party. Unless otherwise provided by statute, the cost of the transcription shall be paid by the requesting party.

History: **En. Sec. 9, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(5), (6).**

2-4-615 through 2-4-620 reserved.

2-4-621. When absent members render decision — proposal for decision and opportunity to submit findings and conclusions — modification by agency. (1) When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case, the decision, if adverse to a party to the proceeding other than the agency itself, may not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision.

(2) The proposal for decision must contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing unless he becomes unavailable to the agency.

(3) The agency may adopt the proposal for decision as the agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the proposal for decision but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept or reduce the recommended penalty in a proposal for decision but may not increase it without a review of the complete record.

(4) A hearing officer who is a member of an agency adjudicative body may participate in the formulation of the agency's final order, provided he has completed all his duties as hearing officer.

History: **En. Sec. 12, Ch. 2, Ex. L. 1971; amd. Sec. 14, Ch. 285, L. 1977; R.C.M. 1947, 82-4212(part); amd. Sec. 4, Ch. 277, L. 1979.**

2-4-622. When hearings officer unavailable for decision. (1) If the person who conducted the hearing becomes unavailable to the agency, proposed findings of fact may be prepared by a person who has read the record only if the demeanor of witnesses is considered immaterial by all parties.

(2) The parties may waive compliance with 2-4-621 and 2-4-622 by written stipulation.

History: **En. Sec. 12, Ch. 2, Ex. L. 1971; amd. Sec. 14, Ch. 285, L. 1977; R.C.M. 1947, 82-4212(part).**

2-4-623. Final orders — notification — availability. (1) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(2) Findings of facts shall be based exclusively on the evidence and on matters officially noticed.

(3) Each conclusion of law shall be supported by authority or by a reasoned opinion.

(4) If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding.

(5) Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

(6) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under 2-4-501. No such agency decision or order is valid or effective against any person or party nor may it be invoked by the agency for any purpose until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order.

History: (1), (3) thru (6)En. Sec. 13, Ch. 2, Ex. L. 1971; amd. Sec. 15, Ch. 285, L. 1977; Sec. 82-4213, R.C.M. 1947; (2)En. Sec. 9, Ch. 2, Ex. L. 1971; Sec. 82-4209, R.C.M. 1947; R.C.M. 1947, 82-4209(7), 82-4213.

2-4-624 through 2-4-630 reserved.

2-4-631. Licenses. (1) When the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license is required by law to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning contested cases apply.

(2) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(3) Whenever notice is required, no revocation, suspension, annulment, withdrawal, or amendment of any license is lawful unless the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action. If the agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

History: En. Sec. 15, Ch. 2, Ex. L. 1971; amd. Sec. 16, Ch. 285, L. 1977; R.C.M. 1947, 82-4215; amd. Sec. 1, Ch. 465, L. 1979.

Part 7

Judicial Review of Contested Cases

2-4-701. Immediate review of agency action. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(part).

2-4-702. Initiating judicial review of contested cases. (1) (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute shall not be precluded from questioning the validity of that statute on judicial review, but such party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Proceedings for review shall be instituted by filing a petition in district court within 30 days after service of the final decision of the agency or, if a rehearing is requested, within 30 days after the decision thereon. Except as otherwise provided by statute, the petition shall be filed in the district court for the county where the petitioner resides or has his principal place of business or where the agency maintains its principal office. Copies of the petition shall be promptly served upon the agency and all parties of record.

(b) The petition shall include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends he is entitled to relief. The petition shall demand the relief to which the petitioner believes he is entitled, and the demand for relief may be in the alternative.

(3) Unless otherwise provided by statute, the filing of the petition shall not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms which it considers proper.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(part).

2-4-703. Receipt of additional evidence. If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(5).

2-4-704. Standards of review. (1) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(2) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(g) because findings of fact, upon issues essential to the decision, were not made although requested.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(6), (7).

2-4-705 through 2-4-710 reserved.

2-4-711. Appeals — staying agency decision. An aggrieved party may obtain review of a final judgment of a district court under this part by appeal to the supreme court within 60 days after entry of judgment. Such appeal shall be taken in the manner provided by law for appeals from district courts in civil cases. Unless otherwise provided by statute or unless the agency has granted a stay through the completion of the judicial review process:

(1) if appeal is taken from a judgment of the district court affirming an agency decision, the agency decision shall not be stayed except upon order of the supreme court; except that, in cases where a stay is in effect at the time of the filing of notice of appeal, the stay shall be continued by operation of law for 20 days from the date of filing of the notice;

(2) if appeal is taken from a judgment of the district court reversing or modifying an agency decision, the agency decision shall be stayed pending final determination of the appeal unless the supreme court orders otherwise.

History: En. Sec. 17, Ch. 2, Ex. L. 1971; amd. Sec. 18, Ch. 285, L. 1977; R.C.M. 1947, 82-4217.

CHAPTER 5

RESERVED

CHAPTER 6

PUBLIC RECORDS

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2-6-306. Renumbered 2-6-108 by Code Commissioner, 1979.
2-6-307. Certified copies of official records.

Part 1

Public Records Generally

2-6-101. Definitions. (1) Writings are of two kinds:

(a) public; and

(b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country;

(b) public records, kept in this state, of private writings.

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents;

(d) public records, kept in this state, of private writings.

(4) All other writings are private.

History: En. Secs. 3170, 3171, 3172, 3182, C. Civ. Proc. 1895; re-en. Secs. 7895, 7896, 7897, 7900, Rev. C. 1907; re-en. Secs. 10539, 10540, 10541, 10544, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1887,

1888, 1889, 1894; re-en. Secs. 10539, 10540, 10541, 10544, R.C.M. 1935; R.C.M. 1947, 93-1001-1, 93-1001-2, 93-1001-3, 93-1001-6.

2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him on demand a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing.

History: En. Secs. 3180, 3181, C. Civ. Proc. 1895; re-en. Secs. 7898, 7899, Rev. C. 1907; re-en. Secs. 10542, 10543, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1892, 1893; re-en. Secs. 10542, 10543, R.C.M. 1935; R.C.M. 1947, 93-1001-4, 93-1001-5.

2-6-103. *(Temporary)* **Filing and copying fees.** (1) The secretary of state, for services performed in his office, shall charge and collect the following fees:

(a) for each copy of any law, resolution, record, or other document or paper on file in his office, except corporate papers, 40 cents per folio or, if the copy is made by any process of reproduction by photographic, photostatic, or similar process, the fee shall be 50 cents per page or fraction thereof;

(b) for affixing certificate and seal; $2;

(c) for receiving and recording each official bond, $10;

(d) for each commission or other document signed by the governor and attested by the secretary of state (pardon, military commissions, and extraditions excepted), $5;

(e) for filing each trademark, $5;

(f) for filing and recording each assignment of a trademark, $5;

(g) for issuing each certificate of record, $5;

(h) for filing and recording miscellaneous papers, records, or other documents, $5;

(i) for filing and recording any other paper not otherwise herein provided for, $5;

(j) for filing and recording any paper, record, or other document or other than a standard form when recommended by the secretary of state, $5;

(k) when a copy of any law, resolution, record, or other document or paper on file in the office of the secretary of state is presented for comparison and certification, 10 cents per folio must be charged and collected for proofreading the same.

(2) No member of the legislature or state or county officer may be charged for any search relative to matters appertaining to the duties of his office or for a certified copy of any law or resolution passed by the legislature relative to his official duties.

(3) Fees shall be collected in advance and when collected by the secretary of state shall be deposited pursuant to 17-6-105.

2-6-103. *(Effective July 1, 1980)* **Filing and copying fees.** (1) The secretary of state, for services performed in his office, shall charge and collect the following fees:

(a) for each copy of any law, resolution, record, or other document or paper on file in his office, except corporate papers, 40 cents per folio or, if the copy is made by any process of reproduction by photographic, photostatic, or similar process, the fee shall be 50 cents per page or fraction thereof;

(b) for affixing certificate and seal, $2;

(c) for receiving and recording each official bond, $10;

(d) for each commission or other document signed by the governor and attested by the secretary of state (pardon, military commissions, and extraditions excepted), $5;

(e) for issuing each certificate of record, $5;

(f) for filing and recording miscellaneous papers, records, or other documents, $5;

(g) for filing and recording any other paper not otherwise herein provided for, $5;

(h) for filing and recording any paper, record, or other document or other than a standard form when recommended by the secretary of state, $5;

(i) when a copy of any law, resolution, record, or other document or paper on file in the office of the secretary of state is presented for comparison and certification, 10 cents per folio must be charged and collected for proofreading the same.

(2) No member of the legislature or state or county officer may be charged for any search relative to matters appertaining to the duties of his office or for a certified copy of any law or resolution passed by the legislature relative to his official duties.

(3) Fees shall be collected in advance and when collected by the secretary of state shall be deposited pursuant to 17-6-105.

History: En. Sec. 410, Pol. C. 1895; amd. Sec. 1, p. 47, L. 1899; amd. Sec. 1, Ch. 127, L. 1903; amd. Sec. 1, Ch. 74, L. 1905; re-en. Sec. 165, Rev. C. 1907; amd. Sec. 1, Ch. 91, L. 1921; re-en. Sec. 145, R.C.M. 1921; Cal. Pol. C. Sec. 416; amd. Sec. 1, Ch. 50, L. 1935; re-en. Sec. 145, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1961; amd. Sec. 141, Ch. 300, L. 1967; amd. Sec. 3, Ch. 185, L. 1971; amd. Sec. 1, Ch. 137, L. 1974; R.C.M. 1947, 25-102; amd. Sec. 5, Ch. 184, L. 1979; amd. Sec. 18, Ch. 429, L. 1979.

2-6-104. Records of officers open to public inspection. Except as provided in 40-8-126 and 27-18-111, the public records and other matters in the office of any officer are at all times during office hours open to the inspection of any person.

History: En. Sec. 1136, Pol. C. 1895; re-en. Sec. 438, Rev. C. 1907; re-en. Sec. 455, R.C.M. 1921; Cal. Pol. C. Sec. 1032; re-en. Sec. 455, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1945; R.C.M. 1947, 59-512(part).

2-6-105. Removal of public records. Any record, a transcript of which is admissible in evidence, must not be removed from the office where it is kept, except upon the order of a court or judge in cases where the inspection of the record is shown to be essential to the just determination of the cause or proceeding pending or where the court is held in the same building with such office.

History: En. Sec. 3240, C. Civ. Proc. 1895; re-en. Sec. 7953, Rev. C. 1907; re-en. Sec. 10597, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1950; re-en. Sec. 10597, R.C.M. 1935; R.C.M. 1947, 93-1101-20(part).

2-6-106. Possession of records. Every public officer is entitled to the possession of all books and papers pertaining to his office or in the custody of a former incumbent by virtue of his office.

History: En. Sec. 1120, Pol. C. 1895; re-en. Sec. 427, Rev. C. 1907; re-en. Sec. 460, R.C.M. 1921; Cal. Pol. C. Sec. 1014; re-en. Sec. 460, R.C.M. 1935; R.C.M. 1947, 59-530; Sec. 2-6-303(1), MCA 1979; redes. 2-6-106 by Code Commissioner, 1979.

2-6-107. Proceedings to compel delivery of records. If any person, whether a former incumbent or another person, refuses or neglects to deliver to the actual incumbent any such books or papers, such actual incumbent may apply, by complaint, to any district court or judge of the county where the person so refusing or neglecting resides and the court or judge must proceed in a summary way, after notice to the adverse party, to hear the allegations and proofs of the parties and to order any such books and papers to be delivered to the petitioners.

History: En. Sec. 1121, Pol. C. 1895; re-en. Sec. 428, Rev. C. 1907; re-en. Sec. 461, R.C.M. 1921; Cal. Pol. C. Sec. 1015; re-en. Sec. 461, R.C.M. 1935; R.C.M. 1947, 59-531; Sec. 2-6-305, MCA 1979; redes. 2-6-107 by Code Commissioner, 1979.

2-6-108. Attachment and warrant to enforce. The execution of the order and delivery of the books and papers may be enforced by attachment as for a witness and also, at the request of the plaintiff, by a warrant directed to the sheriff or a constable of the county, commanding him to search for such books and papers and to take and deliver them to the plaintiff.

History: En. Sec. 1122, Pol. C. 1895; re-en. Sec. 429, Rev. C. 1907; re-en. Sec. 462, R.C.M. 1921; Cal. Pol. C. Sec. 1016; re-en. Sec. 462, R.C.M. 1935; R.C.M. 1947, 59-532; Sec. 2-6-306, MCA 1979; redes. 2-6-108 by Code Commissioner, 1979.

2-6-109. Prohibition on distribution or sale of mailing lists — penalty. (1) Except as provided in subsections (3), (4), (5), and (6), in order to protect the privacy of those who deal with state and local government:

(a) no agency may distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) no list of persons prepared by the agency may be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) This section does not prevent an individual from compiling a mailing list by examination of original documents or applications which are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115 and 13-38-103, or to lists of the names of employees governed by Title 39, chapter 31.

(5) This section shall not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to Title 20, chapter 30, or specifically exempted therefrom as provided in 20-30-102.

(6) This section does not apply to the right of access either by Montana law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

(7) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor.

History: En. Sec. 1, Ch. 606, L. 1979.

2-6-110 reserved.

2-6-111. Custody and reproduction of records by secretary of state. (1) The secretary of state is charged with the custody of:

(a) the enrolled copy of the constitution;

(b) all the acts and resolutions passed by the legislature;

(c) the journals of the legislature;

(d) the great seal;

(e) all books, records, deeds, parchments, maps, and papers kept or deposited in his office pursuant to law.

(2) All records included in subsection (1) may be kept and recorded by photostatic or microphotographic means, microfilm, or any other mechanical process that produces a clear, accurate, and permanent duplicate of the original record in accordance with standards not less than those approved for permanent records by the American national standards institute.

(3) The state records committee created by 2-15-1013 may approve the disposal of original records once those records are reproduced as provided for in subsection (2), unless disposal takes the form of transfer of records; in that case, reproduction will not be necessary. The reproduction, or certified copy thereof, may be used in place of the original for all purposes, including as evidence in any court or proceeding, and shall have the same force and effect as the original record.

(4) The secretary of state shall prepare enlarged typed or photographic copies of the records whenever their production is required by law.

(5) At least two copies shall be made of all records reproduced as provided for in subsection (2). The secretary of state shall place one copy in a fireproof storage place and shall retain the other copy in his office with suitable equipment for displaying such record by projection to not less than its original size and for preparing, for persons entitled thereto, copies of the record.

(6) All duplicates of all records shall be identified and indexed.

History: En. Sec. 400, Pol. C. 1895; re-en. Sec. 153, Rev. C. 1907; re-en. Sec. 133, R.C.M. 1921; Cal. Pol. C. Sec. 407; re-en. Sec. 133, R.C.M. 1935; R.C.M. 1947, 82-2201; amd. Sec. 1, Ch. 152, L. 1979.

Part 2

Public Records Management

2-6-201. Purpose. The purpose of this part is to create an effective records management program for executive branch agencies of the state of Montana by establishing guidelines and procedures for the efficient and economical control of the creation, utilization, maintenance, and preservation of state records.

History: En. 82-3333 by Sec. 2, Ch. 339, L. 1977; R.C.M. 1947, 82-3333.

2-6-202. Definitions. As used in this part, the following definitions apply:

(1) "Public records" includes any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies thereof, regardless of physical form or characteristics, that has been made or received by a state agency in connection with the transaction of official business and preserved for informational value or as evidence of a transaction and all other records or documents required by law to be filed with or kept by any agency of the state of Montana.

(2) "State records committee" or "committee" means the state records committee provided for in 2-15-1013.

History: (1)En. 82-3334 by Sec. 3, Ch. 339, L. 1977; Sec. 82-3334, R.C.M. 1947; (2)En. by Code Commissioner, 1979; R.C.M. 1947, 82-3334(1).

2-6-203. Department of administration's powers and duties. (1) In order to insure the proper management and safeguarding of public records, the department of administration shall undertake the following:

(a) establish guidelines for inventorying, cataloging, retaining, and transferring all public records of state agencies;

(b) review and analyze all state agency filing systems and procedures and approve filing system equipment requests;

(c) establish and operate the state records center, as authorized by appropriation, for the purpose of storing and servicing public records not retained in office space;

(d) gather and disseminate information on all phases of records management, including current practices, methods, procedures, and devices for the efficient and economical management of records;

(e) operate a central microfilm unit which will microfilm, on a cost recovery basis, all records approved for filming by the office of origin and the department of administration; and

(f) approve microfilming projects and microfilm equipment purchases undertaken by all state agencies.

(2) Upon request, the department shall assist and advise in the establishment of records management procedures in the legislative and judicial branches of state government and shall, as required by them, provide services similar to those available to the executive branch.

History: (1)En. 82-3335 by Sec. 4, Ch. 339, L. 1977; Sec. 82-3335, R.C.M. 1947; (2)En. 82-3337 by Sec. 6, Ch. 339, L. 1977; Sec. 82-3337, R.C.M. 1947; R.C.M. 1947, 82-3335, 82-3337.

2-6-204. State records committee approval. The committee shall approve, modify, or disapprove the recommendations on retention schedules of all public records to determine which documents not included in the provisions of this part are to be designated public records and approve agency requests to dispose of such public records.

History: En. 82-3338 by Sec. 7, Ch. 339, L. 1977; R.C.M. 1947, 82-3338(3).

2-6-205. Preservation of public records. All public records are and shall remain the property of the state. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this part.

History: En. 82-3334 by Sec. 3, Ch. 339, L. 1977; R.C.M. 1947, 82-3334(2).

2-6-206. Protection of essential records. (1) In order to provide for the continuity and preservation of civil government, each elected and appointed officer of the executive branch shall designate certain public records as essential records needed for an emergency or for the reestablishment of normal operations after any such emergency. A list of such records shall be forwarded to the department of administration. The list shall be reviewed from time to time by the elected or appointed officers to insure its accuracy. Any changes or revisions shall be forwarded to the department.

(2) Each elected and appointed officer of state government shall insure that the security of essential records is accomplished by the most economical means possible. Protection of essential records may be by vaulting, planned or natural dispersal of copies, storage in the state archives, or any other method approved by the department.

(3) Reproductions of essential records may be by photocopy, magnetic tape, microfilm, or other methods approved by the department.

History: En. 82-3341 by Sec. 10, Ch. 339, L. 1977; R.C.M. 1947, 82-3341.

2-6-207. Certified copies of public records. (1) The Montana historical society shall reproduce and certify copies of public records in its possession upon application of any citizen of this state.

(2) The certified copy of a public record has the same force in law as if made by the original custodian.

History: En. Sec. 1, Ch. 102, L. 1979.

Compiler's Comments

Codification instructions. Sec. 4, Ch. 102, L. 1979, provided: "The code commissioner shall codify section 1 in chapter 6, part 2, of Title 2 and section 2 in chapter 6, part 3, of Title 2."

2-6-208 through 2-6-210 reserved.

2-6-211. Transfer of public records. (1) All public records not required in the current operation of the office where they are made or kept and all records of each agency, commission, committee, or any other activity of the executive branch of state government which may be abolished or discontinued shall be, in accordance with approved records retention schedules, either transferred to the state records center or transferred to the custody of the state archives if such records are considered to have permanent administrative or historical value.

(2) When records are transferred to the state records center, the agency so doing loses none of its rights of control and access. The state records center is only a custodian of the agency records, and access will only be by agency approval. Agency records for which the state records center acts as custodian may not be subpoenaed from the state records center but must be subpoenaed from the agency to which the records belong. Fees may be charged to cover the cost of records storage and servicing.

(3) If an agency does not wish to transfer records as provided in an approved retention schedule, the agency shall, within 30 days, notify the department of administration and request a change in the schedule.

History: En. 82-3340 by Sec. 9, Ch. 339, L. 1977; R.C.M. 1947, 82-3340.

2-6-212. Disposal of public records. Requests for the disposal of public records shall be submitted to the state records committee by the agency concerned. No public record may be disposed of or destroyed without the unanimous approval of the state records committee.

History: En. 82-3339 by Sec. 8, Ch. 339, L. 1977; R.C.M. 1947, 82-3339.

2-6-213. Agency responsibilities and transfer schedules. Each executive branch agency of state government shall administer its records management function and shall:

(1) coordinate all aspects of the agency records management function;

(2) manage the inventorying of all public records within the agency for disposition, scheduling, and transfer action in accordance with procedures prescribed by the department of administration and the state records committee;

(3) analyze records inventory data, examine and compare divisional or unit inventories for duplication of records, and recommend to the department of administration and the state records committee minimal retentions for all copies of public records within the agency;

(4) approve all records disposal requests which are submitted by the agency to the state records committee; and

(5) review established records retention schedules to insure that they are complete and current.

History: En. 82-3336 by Sec. 5, Ch. 339, L. 1977; R.C.M. 1947, 82-3336.

Part 3

Records of Elected Executive Branch Officers

2-6-301. Definitions. As used in this part the following definitions apply:

(1) "Constitutionally designated and elected officials of the executive branch of government" means the governor, lieutenant governor, attorney general, secretary of state, superintendent of public instruction, and auditor.

(2) "Official records" means any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies thereof, regardless of physical form or characteristics, that has been made or received by a constitutionally designated and elected official of the executive branch of government in transacting his official duties and preserved for informational value or as evidence of a transaction.

History: En. 59-530.1 by Sec. 1, Ch. 441, L. 1977; R.C.M. 1947, 59-530.1.

2-6-302. Official records management — powers and duties. In order to insure the proper management and safeguarding of official records, the Montana historical society shall:

(1) establish and operate the state archives as authorized by appropriation for the purpose of storing and servicing official records transferred to the custody of the state archives;

(2) in cooperation with the department of administration and the state records committee provided for in 2-15-1013 establish guidelines for the inventorying, cataloging, retention, and transfer of all official records;

(3) maintain and enforce restrictions on access to official records in the custody of the state archives in accordance with the provisions of this part;

(4) provide adequate housing and care of official records in the custody of the state archives to insure their proper preservation and use by the public;

(5) in accordance with the guidelines established pursuant to subsection (2), remove and destroy duplicate official records and official records of insignificant historical value from the records deposited in the state archives.

History: **En. 59-530.3 by Sec. 3, Ch. 441, L. 1977; R.C.M. 1947, 59-530.3; amd. Sec. 6, Ch. 184, L. 1979.**

2-6-303. Ownership of records — transfer. (1) All official records shall remain the property of the state. They shall be delivered by outgoing officials to their successors and shall be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this part.

(2) A public officer may, with the concurrence of the Montana historical society, transfer to the state archives official records that he has been specifically directed by statute to preserve or keep in his office.

History: **(1)En. 59-530.2 by Sec. 2, Ch. 441, L. 1977; Sec. 59-530.2, R.C.M. 1947; (2)En. Sec. 3, Ch. 102, L. 1979.**

Compiler's Comments

Commissioner correction. Former subsection (1) was renumbered 2-6-106 by the Code Commissioner, 1979, because the subject matter of that subsection relates to a broader category than executive branch officers.

2-6-304. Outgoing officials — records management duties. (1) Within 2 years after the completion of the final term of office of a constitutionally designated and elected official of the executive branch of government, all of the official records not necessary to the current operation of that office shall be subject to storage, disposal, or transfer in accordance with the provisions of this part.

(2) All official records of a retiring constitutionally designated and elected official not necessary to the current operation of that office and considered worthy of preservation by the Montana historical society shall be transferred to the custody of the state archives within that 2-year period.

(3) An outgoing official, in consultation with staff members of the Montana historical society, shall review his official records and isolate any items of a purely personal nature. Such personal papers are not subject to this part, but they may be deposited with the official papers at the official's discretion.

(4) An outgoing official, in consultation with staff members of the Montana historical society, may restrict access to certain segments of his official records. No restrictions may be longer than the lifetime of the depositing official. Restricted access may be imposed only to protect the confidentiality of personal information contained in the records. Restricted access may not be imposed unless the demand of individual privacy clearly exceeds the merits of public disclosure.

(5) Any question concerning the transfer or other status of official records arising between the state archives and an elected official's office shall be decided by a three-fourths vote of the members of the state records committee.

History: **En. 59-530.4 by Sec. 4, Ch. 441, L. 1977; R.C.M. 1947, 59-530.4.**

2-6-305. Renumbered 2-6-107 by Code Commissioner, 1979.

2-6-306. Renumbered 2-6-108 by Code Commissioner, 1979.

2-6-307. Certified copies of official records. (1) The Montana historical society shall reproduce and certify copies of official records in its possession upon application of any citizen of this state.

(2) The certified copy of an official record has the same force in law as if made by the original custodian.

History: En. Sec. 2, Ch. 102, L. 1979.

Compiler's Comments

Codification instructions. Sec. 4, Ch. 102, L. 1979, provided: "The code commissioner shall codify section 1 in chapter 6, part 2, of Title 2 and section 2 in chapter 6, part 3, of Title 2."

CHAPTER 7

REPORTS AND AUDITS

Part 1 — Reports

Section
2-7-101. Definitions.
2-7-102. Biennial reports by state agencies — submission to members of the legislature — publication.
2-7-103. Review by governor of executive branch — report to legislature.
2-7-104. Revenue estimate — report to governor and legislature.
2-7-105. Tax information submitted.

Parts 2 through 4 reserved

Part 5 — Audits of Political Subdivisions

2-7-501. Definition.
2-7-502. Audit purpose.
2-7-503. Annual audits of local governmental entities.
2-7-504. Accounting methods.
2-7-505. Audit scope and standards.
2-7-506. Audit by independent accountant or auditor.
2-7-507. Duty of officers to aid in audit.
2-7-508. Power to examine books and papers.
Sections 2-7-509 and 2-7-510 reserved.
2-7-511. Access to public accounts — suspension of officer in case of discrepancy.
2-7-512. Exit review conference.
2-7-513. Content of audit report.
2-7-514. Issuance and filing of audit report.
2-7-515. Actions by governing bodies.
2-7-516. Audit fees.
Sections 2-7-517 through 2-7-520 reserved.
2-7-521. Publication.

Part 1

Reports

2-7-101. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Elective official" means the superintendent of public instruction, public service commissioner, secretary of state, attorney general, and state auditor.

(2) "State agency" means any elective official, office, department, board, bureau, or commission which is of the executive branch of state government.

History: En. Sec. 1, Ch. 93, L. 1969; R.C.M. 1947, 82-4001.

2-7-102. Biennial reports by state agencies — submission to members of the legislature — publication. (1) Before September 1 of each odd-numbered year, each state agency shall submit a written report to the governor of its activities during the immediately preceding fiscal biennium.

(2) Each report shall contain information prescribed by the governor describing fully the activities of the state agency. Reports shall contain recommendations from each state agency for improvements in programs administered by it.

(3) State agency reports shall be filed in the governor's office and are open for inspection by any person.

(4) From the reports submitted to him the governor shall:

(a) delete extraneous or duplicated data;

(b) standardize the presentation of data to the extent feasible and desirable;

(c) request pertinent additional information he wishes included in the report;

(d) prepare a report for submission to the members of the legislature.

(5) Except as provided in subsection (6) of this section, the governor may authorize the publication of a state agency report in pamphlet form. The report in pamphlet form shall be published and distributed by the state agency responsible for reporting.

(6) An elective official may publish an annual report in pamphlet form, in addition to the report to the governor required by subsection (1) of this section, without permission from the governor.

(7) Copies of each report published as provided in subsections (4), (5), and (6) of this section shall be distributed as follows:

(a) two copies to the secretary of state;

(b) two copies to the legislative council;

(c) two copies to the legislative auditor;

(d) one copy to each member of the legislature;

(e) two copies to the budget director;

(f) two copies to the librarian of the state historical society;

(g) at least four copies to the state publications distribution center of the state library and additional copies as requested by the state library;

(h) additional distribution in the discretion of the governor or state agency.

History: En. Sec. 2, Ch. 93, L. 1969; amd. Sec. 1, Ch. 134, L. 1971; R.C.M. 1947, 82-4002; amd. Sec. 1, Ch. 335, L. 1979.

2-7-103. Review by governor of executive branch — report to legislature. (1) The office of the governor shall continuously study and evaluate the organizational structure, management practices, and functions of the executive branch and of each agency. The governor shall, by executive order or other means within the authority granted to him, take action to improve the manageability of the executive branch.

(2) The governor shall submit a report to each regular legislative session concerning the duties of his office under subsection (1) of this section and his recommendations, if any, for the transfer of functions between agencies, the elimination of unnecessary functions, or other recommendations to improve the manageability of the executive branch.

History: En. 82-1315 by Sec. 1, Ch. 238, L. 1973; R.C.M. 1947, 82-1315.

2-7-104. Revenue estimate — report to governor and legislature. The director of revenue shall prepare revenue estimates of state revenue from all sources and shall continuously study fiscal problems and tax structures of state and local governments and submit the studies to the governor and legislature at their request.

History: En. 82A-1804 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 64, Ch. 391, L. 1973; R.C.M. 1947, 82A-1804(part).

2-7-105. Tax information submitted. It shall be the duty of all public officers of the state and of any municipality to give to the department of revenue information in their possession relating to taxation when required by the department and cooperate with and aid the department in every manner in its efforts to secure a fair, equitable, and just enforcement of the taxation and revenue laws of the state.

History: En. Sec. 15, Ch. 3, L. 1923; re-en. Sec. 2122.15, R.C.M. 1935; amd. Sec. 8, Ch. 516, L. 1973; R.C.M. 1947, 84-715.

Parts 2 through 4 reserved

Part 5

Audits of Political Subdivisions

2-7-501. Definition. Unless the context requires otherwise, in this part "department" means the department of community affairs.

History: En. 82-4515 by Sec. 1, Ch. 380, L. 1975; R.C.M. 1947, 82-4515.

2-7-502. Audit purpose. The purpose of the audit of the affairs of the governmental entities as set forth in this part shall be to insure constituent interests by determining that compliance with all appropriate statutes and regulations is accomplished, that the financial condition and operations of the entities are reasonably conducted and reported, that the stewardship of such entities is conducted in such a manner as to preserve and protect the public trust, and to accomplish, with economy and efficiency, the duties and responsibilities of the entities in accordance with the legal requirements imposed and the desires of the public.

History: En. 82-4517 by Sec. 3, Ch. 380, L. 1975; R.C.M. 1947, 82-4517.

2-7-503. Annual audits of local governmental entities. (1) The department shall audit the affairs of all:

(a) counties;

(b) incorporated cities and towns;

(c) first- and second-class school districts and third-class school districts that maintain a high school; and

(d) school district extracurricular fund for pupil functions;

(e) irrigation districts;

(f) conservancy districts;

(g) fire districts and volunteer fire departments in unincorporated areas, towns, and villages supported by a mill levy;

(h) fire department relief associations.

(2) Each audit shall be made annually and shall cover the immediately preceding fiscal year of the governmental entity.

(3) Each annual audit shall be initiated not later than 12 months from the close of the fiscal year for which the audit is conducted.

(4) In addition to the annual audits required by this section, the department may at any time conduct a special audit of the affairs of any governmental entity referred to in this part.

(5) The fee for the special audit shall be a charge based upon the costs incurred by the department in the conduct of such special audit. The audit fee herein provided shall be paid by the governmental entity to the state treasurer and credited to the state general fund.

History: En. 82-4516, 82-4529 by Secs. 2, 15, Ch. 380, L. 1975; R.C.M. 1947, 82-4516(1) thru (3), 82-4529; amd. Sec. 1, Ch. 336, L. 1979.

Compiler's Comments

Effective date. Sec. 3, Ch. 336, L. 1979, provided: "This act is effective upon passage and approval." Approved March 27, 1979.

2-7-504. Accounting methods. The department shall prescribe the general methods and details of accounting for the receipt and disbursement of all moneys belonging to governmental entities referred to in this part and shall establish in those offices general methods and details of accounting. All governmental entity officers shall conform with the standards prescribed by the department.

History: En. 82-4530 by Sec. 16, Ch. 380, L. 1975; R.C.M. 1947, 82-4530.

2-7-505. Audit scope and standards. (1) Each annual audit shall be a comprehensive audit of the affairs of the governmental entity, including comment on the balance sheet, results of operations, compliance with state statutes and regulations, recommendations for improvement, and any other comments deemed pertinent by the auditor, including his expression of opinion as to the adequacy of the financial presentations.

(2) Each such annual audit required shall be made in accordance with generally accepted governmental auditing standards.

History: En. 82-4518 by Sec. 4, Ch. 380, L. 1975; R.C.M. 1947, 82-4518.

2-7-506. Audit by independent accountant or auditor. (1) In lieu of the annual audits required of the department, the department may, with the consent of or at the request of the respective governmental entities, contract out such annual audits with a public accountant or firm of public accountants who are licensed under the laws of Montana.

(2) The department shall establish rules governing the administration of the contracts between the department, the independent accountant/auditor, and the governmental entities. These rules shall include but not be limited to:

(a) establishment of criteria for the selection of the independent accountant/auditor;

(b) contract form and content; and

(c) standards of audit and reporting.

History: **En. 82-4525 by Sec. 11, Ch. 380, L. 1975; R.C.M. 1947, 82-4525.**

2-7-507. Duty of officers to aid in audit. The officers and employees of the governmental entities referred to in this part shall afford all reasonable facilities for the department's audit and shall furnish information to the department under oath in a manner prescribed by the department.

History: **En. 82-4527 by Sec. 13, Ch. 380, L. 1975; R.C.M. 1947, 82-4527.**

2-7-508. Power to examine books and papers. The department may examine any books, papers, accounts, and documents in the office or possession of any governmental entity referred to in this part and may send for persons or papers and examine under oath any person concerning them.

History: **En. 82-4528 by Sec. 14, Ch. 380, L. 1975; R.C.M. 1947, 82-4528.**

2-7-509 and 2-7-510 reserved.

2-7-511. Access to public accounts — suspension of officer in case of discrepancy. (1) The department may count the cash, verify the bank accounts, and verify all accounts of a public officer whose accounts it is examining under law.

(2) If an officer of any county, city, town, school, or other governmental entity referred to in this part refuses to accord the department access during an audit of the officer's accounts to his cash, bank accounts, or any of the papers, vouchers, or records of his office or if the department finds a shortage of cash, the department shall immediately file a preliminary report showing the refusal of that officer or the existence of the shortage and the approximate amount of the shortage with the respective county, city, or town attorney and the governing body of the governmental entity.

(3) Upon filing of the statement, the officer shall immediately be suspended from the duties and emoluments of his office and the governing body of such governmental entity shall appoint some qualified person to the office pending completion of the audit.

(4) Upon the completion of the audit by the department, if a shortage of cash existed in the accounts of the officer, the department shall file with the governing body of the governmental entity a final report of the audit, showing the shortage. The right of the officer to the office is then forfeited, and the office becomes vacant as of the date of the suspension of the officer. The person appointed to the office upon the suspension of the officer shall hold the office until the election and qualification of his successor as provided by law.

(5) An officer whose right to office has been forfeited may, within 10 days after the filing of the department's final report or audit, begin in the district

court of the proper judicial district a proceeding in quo warranto to test the right of his successor to hold the office and to test the accuracy of the final report and audit of the department.

History: En. 82-4526 by Sec. 12, Ch. 380, L. 1975; R.C.M. 1947, 82-4526.

2-7-512. Exit review conference. Upon completion of the field work of each audit, the in-charge auditor is required to hold with the appropriate officials an exit review conference in which the audit results shall be discussed.

History: En. 82-4519 by Sec. 5, Ch. 380, L. 1975; R.C.M. 1947, 82-4519.

2-7-513. Content of audit report. The audit reports shall contain but are not limited to the following:

(1) financial statements that conform with the generally accepted governmental accounting principles and which, insofar as possible, present the financial position and results of financial operations for each fund of the governmental entity;

(2) an expression of opinion regarding the financial statements, taken as a whole, or an assertion to the effect that an opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor should be stated.

(3) a statement that previously noted deficiencies or recommendations contained in previous audit reports have been acted upon by adoption as recommended, adoption with modification, or rejection; and

(4) disclosure of any lack of compliance with state statutes or regulations, as well as any operating deficiencies or recommendations for improvement.

History: En. 82-4520 by Sec. 6, Ch. 380, L. 1975; R.C.M. 1947, 82-4520.

2-7-514. Issuance and filing of audit report. (1) Within 60 days after the completion of the field work, the department shall issue audit reports as follows:

(a) county audit reports to county commissioners, the county clerk and recorder, and the county attorney;

(b) city or town audit reports to the city or town governing body, the city or town chief financial officer, the city or town chief executive, and the city or town attorney;

(c) school district audit reports to the trustees, the county superintendent of schools, the state superintendent of public instruction, the county attorney, and the clerk of the school district;

(d) school district extracurricular fund audit reports to the trustees, the county superintendent of schools, the state superintendent of public instruction, the county attorney, and the fund administrator;

(e) fire district or volunteer fire department audit reports to the trustees, the county attorney, and the clerk and recorder of the county in which the fire district or fire department is located;

(f) conservancy district audit reports to the board of directors, the department of natural resources and conservation, the district court, and the county attorney(s);

(g) fire department relief association audit reports to the trustees, the city or town attorney, and the respective city or town clerk; and

(h) irrigation district audit reports to the board of commissioners, the district court, and the county attorney(s).

(2) All audit reports issued by the department are to be maintained on file at an appropriate location and open to public inspection.

History: En. 82-4521 by Sec. 7, Ch. 380, L. 1975; R.C.M. 1947, 82-4521(1), (3).

2-7-515. Actions by governing bodies. (1) Upon receipt of the audit report, the governing bodies of each audited entity shall review the contents and within 30 days shall notify the department in writing as to what action they plan to take on any deficiencies or recommendations contained in the audit report. If no deficiencies or recommendations appear in the audit report, notification shall not be required.

(2) Notification to the department shall include a statement by the governing bodies that noted deficiencies or recommendations for improvement have been acted upon by adoption as recommended, adoption with modification, or rejection.

(3) In cases where a violation of law or nonperformance of duty is found on the part of an officer, employee, or board, the officer, employee, or board must be proceeded against by the attorney general or county, city, or town attorney as provided by law. The county, city, or town attorney shall report to the department within 30 days after receiving the audit report from the department the proceedings instituted or to be instituted relating to the violations of law and nonperformance of duty. If the county, city, or town attorney fails or refuses to prosecute the case, the department may employ an attorney to prosecute the case at the expense of the respective governmental entity.

History: En. 82-4521, 82-4522 by Secs. 7, 8, Ch. 380, L. 1975; R.C.M. 1947, 82-4521(2), 82-4522.

2-7-516. Audit fees. (1) The department shall charge audit fees based upon the costs incurred by the department in the conduct of each annual audit, except as follows:

(a) For each annual audit of fire department relief associations, the department shall charge audit fees on the basis of the funds of the association:

(i) If the fund is more than $1,000 and less than $5,000, the annual audit fee shall be $10.

(ii) If the fund is from $5,000 to $10,000, the annual audit fee shall be $25.

(iii) If the fund is more than $10,000, the annual audit fee shall be $35.

(b) For each annual audit of fire districts and volunteer fire departments, the department shall charge audit fees of $7.50 an hour for each person engaged in the audit.

(c) For each annual audit of irrigation districts, the department shall charge audit fees of $70 a day for each person engaged in the audit.

(d) For each annual audit of conservancy districts, the department shall charge audit fees of $70 a day for each person engaged in the audit.

(2) All audit fees herein provided shall be paid by the governmental entity to the state treasurer and credited to the state general fund.

History: En. 82-4524 by Sec. 10, Ch. 380, L. 1975; R.C.M. 1947, 82-4524.

2-7-517 through 2-7-520 reserved.

2-7-521. Publication. After the expiration of the 30-day period provided for in 2-7-515(1), the department shall send a copy of the general comments section of each annual audit report to a newspaper of general circulation for publication. However, the general comments section of each annual county audit report shall be sent to the official newspaper of the county for publication. The publication shall include a statement to the effect that the audit report is on file in its entirety and open to public inspection. Publication costs shall be borne by the audited governmental entity.

History: **En. 82-4523 by Sec. 9, Ch. 380, L. 1975; R.C.M. 1947, 82-4523.**

CHAPTER 8

LEGISLATIVE REVIEW

Part 1 — Periodic Agency Evaluation

Section
2-8-101. Purpose.
2-8-102. Definitions.
2-8-103. Agencies to terminate.
2-8-104. Termination of future regulatory agencies.
Sections 2-8-105 through 2-8-110 reserved.
2-8-111. Prereview agency responsibilities.
2-8-112. Legislative audit committee review and report — review criteria.
2-8-113. Hearings by standing committee — criteria for termination.
Sections 2-8-114 through 2-8-120 reserved.
2-8-121. Effect of termination.
2-8-122. Reestablishment.

Part 1

Periodic Agency Evaluation

2-8-101. Purpose. (1) The legislature finds state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules. The legislature questions whether conditions causing the establishment of these agencies, programs, and rules have not changed to such an extent as to remove the need for some or all of the agencies, programs, and rules.

(2) It is the intent of the legislature, by establishing a system of periodic evaluation of the need for and the performance of agencies preparatory to termination, modification, or reestablishment, to be in a better position to ensure as follows:

(a) The executive department is responsive to the needs of all of the people of the state.

(b) No agency, program, or rule exists which is not responsive to those needs.

(c) No profession, occupation, business, industry, or other endeavor is subject to the state's regulatory power unless the exercise of such power is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage. The exercise of the state's police power shall be done only to the extent necessary for that purpose.

(d) The state may not regulate a profession, occupation, industry, business, or other endeavor in a manner which will unreasonably adversely affect the competitive market.

(e) There exists a systematic legislative review of the need for and public benefits derived from a program or function which licenses or otherwise regulates a profession, occupation, business, industry, or other endeavor by a periodic review and termination, modification, or reestablishment of such programs and functions.

History: **En. 82-4601 by Sec. 1, Ch. 562, L. 1977; R.C.M. 1947, 82-4601.**

2-8-102. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive department of state government.

(2) "Performance audit" means an examination of the effectiveness of administration and its efficiency and adequacy in terms of the program of a state agency authorized by law to be performed and the conformance of expenditures with legislative intent. Audits conducted shall include an analysis of the operation of the agency with special regard to the duplication of efforts between the audited agency and other agencies and the quality of service being rendered.

History: **En. 82-4602 by Sec. 2, Ch. 562, L. 1977; R.C.M. 1947, 82-4602.**

2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(c) board of barbers, department of professional and occupational licensing, created by 2-15-1625;

(d) board of chiropractors, department of professional and occupational licensing, created by 2-15-1613;

(e) board of cosmetologists, department of professional and occupational licensing, created by 2-15-1626;

(f) board of dentists, department of professional and occupational licensing, created by 2-15-1606;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 2-15-1616;

(h) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 2-15-1605;

(j) board of morticians, department of professional and occupational licensing, created by 2-15-1619;

(k) board of nursing, department of professional and occupational licensing, created by 2-15-1610;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 2-15-1611;

(m) board of optometrists, department of professional and occupational licensing, created by 2-15-1612;

(n) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(o) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(q) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(s) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(t) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(u) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202;

(v) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horse racing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, created by 2-15-1641;

(b) the board of architects, created by 2-15-1651;

(c) state banking board, department of business regulation, created by 2-15-1803;

(d) the state electrical board, created by 2-15-1654;

(e) the board of professional engineers and land surveyors, created by 2-15-1653;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, created by 2-15-1652;

(i) the board of county printing, created by 2-15-1102;

(j) the board of plumbers, created by 2-15-1655;

(k) board of physical therapy examiners, created by 2-15-1628.

History: En. 82-4603 by Sec. 3, Ch. 562, L. 1977; R.C.M. 1947, 82-4603; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 2, Ch. 321, L. 1979; amd. Sec. 2, Ch. 325, L. 1979; amd. Sec. 8, Ch. 351, L. 1979; amd. Sec. 2, Ch. 364, L. 1979; amd. Sec. 2, Ch. 388, L. 1979; amd. Sec. 2, Ch. 408, L. 1979; amd. Sec. 2, Ch. 439, L. 1979; amd. Sec. 1, Ch. 462, L. 1979; amd. Sec. 2, Ch. 491, L. 1979; amd. Sec. 2, Ch. 546, L. 1979; amd. Sec. 2, Ch. 549, L. 1979; amd. Sec. 2, Ch. 655, L. 1979; amd. Sec. 2, Ch. 684, L. 1979.

Compiler's Comments

Effective dates. (1) Sec. 13, Ch. 325, L. 1979, provided: "Sections 1 and 2 are effective on passage and approval." Ch. 325 reestablished the board of landscape architects and was approved March 26, 1979.

(2) Sec. 27, Ch. 684, L. 1979, provided: "Sections 1 and 2 are effective on passage and approval." Ch. 684 reestablished the board of public accountants and was approved May 9, 1979.

Commissioner correction. The board of public accountants, the board of architects, the state electrical board, and the board of professional engineers and land surveyors were reestablished for a period of six years by Ch. 684, Ch. 388, Ch. 546, and Ch. 408, L. 1979, respectively. The code commissioner added reference to these boards to subsection (4) for consistency with other boards or offices reestablished for six years, to reflect the intent of the chapters reestablishing the boards, and to make the list in subsection (4) complete.

Subsection (4)(a) through (4)(k) were added by Ch. 684, Ch. 388, Ch. 321, Ch 546, Ch. 408, Ch. 655, Ch. 439, Ch. 325, Ch. 364, Ch. 549, and Ch. 491, L. 1979, respectively. Grammatical changes were made in the lead-in of subsection (4) to accommodate reference to all the boards and offices in one list.

2-8-104. Termination of future regulatory agencies. Any agency or program created in part to regulate any profession, occupation, business, or other endeavor by law enacted after January 1, 1977, shall terminate on July 1 of the year of the third regular biennial legislative session following enactment of such law. Any such agency or program shall be reviewed as required in 2-8-111 through 2-8-122, and such review shall be completed prior to the convening of the third regular biennial legislative session following enactment of such law.

History: En. 82-4609 by Sec. 9, Ch. 562, L. 1977; R.C.M. 1947, 82-4609.

2-8-105 through 2-8-110 reserved.

2-8-111. Prereview agency responsibilities. An agency designated by 2-8-103 or 2-8-104 for termination shall by 22 months preceding the date set for termination:

(1) delineate goals of programs for which it is responsible, which goals reflect the state's constitution, statutes, and authoritative judicial, legislative, and executive decisions or pronouncements;

(2) delineate objectives of programs and layout clearly enough to be tested, the logic in the assumptions linking expenditures to outcome anticipated, outcome anticipated to objectives, and objectives to impact on problems addressed in goals.

History: **En. 82-4605 by Sec. 5, Ch. 562, L. 1977; R.C.M. 1947, 82-4605.**

2-8-112. Legislative audit committee review and report — review criteria. (1) The legislative audit committee is responsible for having conducted a review of each agency scheduled for termination by 2-8-103. The review shall be completed at least 6 months prior to the date set for termination.

(2) The review conducted shall include a performance audit of the agency and a thorough examination of the following:

(a) Would the absence of regulation significantly harm or endanger the public health, safety, or welfare?

(b) Is there a reasonable relationship between the exercise of the state's police power and the protection of the public health, safety, or welfare?

(c) Is there another less restrictive method of regulation available which could adequately protect the public?

(d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

(e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

(f) Are all facets of the regulatory process designed solely for the purpose of and have as their primary effect the protection of the public?

(3) The legislative audit committee shall assist in the implementation of the provisions of this part and shall establish administrative procedures which facilitate the review and evaluation as required in this part.

(4) Upon completion of its review, the legislative audit committee shall make a report of its recommendations for continuation, modification, or termination and submit a proposed bill for the ensuing legislative session. If termination is recommended, the bill should repeal or otherwise deal with all statutes and parts of statutes for which the agency reviewed is responsible.

History: **En. 82-4604 by Sec. 4, Ch. 562, L. 1977; R.C.M. 1947, 82-4604.**

2-8-113. Hearings by standing committee — criteria for termination. (1) Prior to abolishment of an agency terminated by 2-8-103 or 2-8-104, the appropriate standing committee in each house of the legislature or a joint committee of both houses composed of members of the standing committee assigned to conduct the hearing shall hold a public hearing, receiving testimony from the public and the head of the department to which the agency involved is attached, the head of the agency involved, and persons who conducted the review.

(2) In the event termination is recommended by the legislative audit committee, the agency has the burden of demonstrating a public need for its continued existence and the extent to which a change in the composition, structure, and operation of the agency would increase the protection of the

public health, safety, or welfare from harm or damage or decrease the adverse effect on the competitive market.

(3) In determining whether to reestablish an agency, the legislature shall consider the performance audit and review conducted by the legislative audit committee, the public testimony responsive to the questions set forth in subsection (2) of 2-8-112, and other matters considered relevant by the committee.

History: **En. 82-4606 by Sec. 6, Ch. 562, L. 1977; R.C.M. 1947, 82-4606.**

2-8-114 through 2-8-120 reserved.

2-8-121. Effect of termination. Unless otherwise provided, upon termination, each agency or unit shall continue in existence until July 1 of the next succeeding year for the purpose of winding up its affairs. During the windup period, termination does not reduce or otherwise limit the powers or authority of each respective agency except that no action may be taken which would continue in effect beyond the 1-year windup period. Upon the expiration of the 1 year after termination, each agency not modified or reestablished shall be abolished and all unexpended balances of appropriations, allocations, or other funds shall revert to the fund from which they were appropriated or, if that fund is abolished, to the general fund.

History: **En. 82-4607 by Sec. 7, Ch. 562, L. 1977; R.C.M. 1947, 82-4607; amd. Sec. 2, Ch. 497, L. 1979.**

2-8-122. Reestablishment. (1) Any agency scheduled for termination under this part or any subsequent act may be reestablished by the legislature for any period of time specified by law, not to exceed 6 years, at the end of which time the legislature shall again review the agency pursuant to 2-8-112 and may again reestablish, modify, or allow the termination of the agency pursuant to this section.

(2) No more than one agency may be continued or reestablished in any bill for an act, and the agency shall be mentioned in the bill's title.

History: **En. 82-4608 by Sec. 8, Ch. 562, L. 1977; R.C.M. 1947, 82-4608.**

CHAPTER 9

LIABILITY EXPOSURE AND INSURANCE COVERAGE

Part 1 — Liability Exposure

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Part 1

Liability Exposure

2-9-101. Definitions. (1) As used in parts 1 through 3 of this chapter, the following definitions apply:

(a) "Claim" means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state.

(b) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.

(c) "Governmental entity" means and includes the state and political subdivisions as herein defined.

(d) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest, any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for which the state may be held liable.

(e) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or any other political subdivision or public corporation.

(f) "Property damage" means injury or destruction to tangible property, including loss of use thereof, caused by an occurrence for which the state may be held liable.

(g) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof.

(2) As used in 2-9-104, the following definitions apply:

(a) "Economic damages" means tangible pecuniary losses.

(b) "Noneconomic damages" means those damages not included in economic, punitive, or exemplary damages including, without limitation, damages for pain and suffering, loss of consortium, mental distress, and loss of reputation.

History: (1)En. Sec. 2, Ch. 380, L. 1973; Sec. 82-4302, R.C.M. 1947; (2)En. 82-4334 by Sec. 8, Ch. 189, L. 1977; Sec. 82-4334, R.C.M. 1947; R.C.M. 1947, 82-4302, 82-4334(3).

2-9-102. Governmental entities liable for torts except as specifically provided by legislature. Every governmental entity is subject to liability for its torts and those of its employees acting within the scope of their employment or duties whether arising out of a governmental or proprietary function except as specifically provided by the legislature under Article II, section 18, of The Constitution of the State of Montana.

History: En. Sec. 10, Ch. 380, L. 1973; amd. Sec. 1, Ch. 189, L. 1977; R.C.M. 1947, 82-4310.

2-9-103. Actions under invalid law or rule — same as if valid — when. (1) If an officer, agent, or employee of a governmental entity acts in good faith, without malice or corruption, and under the authority of law and that law is subsequently declared invalid as in conflict with the constitution of Montana or the constitution of the United States, neither he nor any other officer or employee of the governmental entity he represents nor the governmental entity he represents is civilly liable in any action in which he, such other officer, or such governmental entity would not have been liable had the law been valid.

(2) If an officer, agent, or employee of a governmental entity acts in good faith, without malice or corruption, and under the authority of a duly promulgated rule or ordinance and that rule or ordinance is subsequently declared invalid, neither he nor any other officer, agent, or employee of the governmental entity he represents nor the governmental entity he represents is civilly liable in any action in which no liability would attach had the rule or ordinance been valid.

History: En. 82-4333 by Sec. 7, Ch. 189, L. 1977; R.C.M. 1947, 82-4333; amd. Sec. 7, Ch. 184, L. 1979.

2-9-104. Limitation on governmental liability for damages in tort — petition for relief in excess of limits. (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for:

(a) noneconomic damages; or

(b) economic damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of $300,000 for each claimant and $1 million for each occurrence.

(2) The legislature or the governing body of a county, municipality, taxing district, or other political subdivision of the state may, in its sole discretion, authorize payments for noneconomic damages or economic damages in excess of the sum authorized in subsection (1)(b) of this section, or both,

upon petition of plaintiff following a final judgment. No insurer is liable for such noneconomic damages or excess economic damages unless such insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of the limitation stated in this section or specifically agrees to provide coverage for noneconomic damages, in which case the insurer may not claim the benefits of the limitation specifically waived.

History: **En. 82-4334 by Sec. 8, Ch. 189, L. 1977; R.C.M. 1947, 82-4334(1), (2); amd. Sec. 2, Ch. 425, L. 1979.**

2-9-105. State or other governmental entity immune from exemplary and punitive damages. The state and other governmental entities are immune from exemplary and punitive damages.

History: **En. 82-4332 by Sec. 6, Ch. 189, L. 1977; R.C.M. 1947, 82-4332.**

2-9-106 through 2-9-110 reserved.

2-9-111. Immunity from suit for legislative acts and omissions. (1) As used in this section:

(a) the term "governmental entity" includes the state, counties, municipalities, and school districts;

(b) the term "legislative body" includes the legislature vested with legislative power by Article V of The Constitution of the State of Montana and any local governmental entity given legislative powers by statute, including school boards.

(2) A governmental entity is immune from suit for an act or omission of its legislative body or a member, officer, or agent thereof.

(3) A member, officer, or agent of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with the introduction or consideration of legislation or action by the legislative body.

(4) The immunity provided for in this section does not extend to any tort committed by the use of a motor vehicle, aircraft, or other means of transportation.

History: **En. 82-4328 by Sec. 2, Ch. 189, L. 1977; R.C.M. 1947, 82-4328.**

2-9-112. Immunity from suit for judicial acts and omissions. (1) The state and other governmental units are immune from suit for acts or omissions of the judiciary.

(2) A member, officer, or agent of the judiciary is immune from suit for damages arising from his lawful discharge of an official duty associated with judicial actions of the court.

(3) The judiciary includes those courts established in accordance with Article VII of The Constitution of the State of Montana.

History: **En. 82-4329 by Sec. 3, Ch. 189, L. 1977; R.C.M. 1947, 82-4329.**

2-9-113. Immunity from suit for certain gubernatorial actions. The state and the governor are immune from suit for damages arising from the lawful discharge of an official duty associated with vetoing or approving bills or in calling sessions of the legislature.

History: **En. 82-4330 by Sec. 4, Ch. 189, L. 1977; R.C.M. 1947, 82-4330.**

2-9-114. Immunity from suit for certain actions by local elected executives. A local governmental entity and the elected executive officer thereof are immune from suit for damages arising from the lawful discharge of an official duty associated with vetoing or approving ordinances or other legislative acts or in calling sessions of the legislative body.

History: En. 82-4331 by Sec. 5, Ch. 189, L. 1977; R.C.M. 1947, 82-4331.

Part 2

Comprehensive State Insurance Plan

2-9-201. Comprehensive insurance plan for state. (1) The department of administration is responsible for the acquisition and administration of all the insurance purchased for protection of the state, as defined in 2-9-101.

(2) The department of administration shall, after consultation with the departments, agencies, commissions, and other instrumentalities of the state, provide a comprehensive insurance plan for the state providing insurance coverage to the state in amounts determined and set by the department of administration and may purchase, renew, cancel, and modify all policies according to the comprehensive insurance plan. The plan may include property, casualty, liability, crime, fidelity, and any such other policies of insurance as the department of administration may from time to time deem reasonable and prudent.

(3) The department of administration may in its discretion elect to utilize a deductible insurance plan, either wholly or in part.

(4) Only the department of administration may procure insurance under parts 1 through 3 of this chapter except as otherwise provided herein.

(5) All offices, departments, agencies, authorities, commissions, boards, institutions, hospitals, colleges, universities, and other instrumentalities of the state hereafter called state participants shall comply with parts 1 through 3 and the insurance plan developed by the department of administration.

History: (1) thru (3)En. Sec. 3, Ch. 380, L. 1973; amd. Sec. 1, Ch. 143, L. 1974; amd. Sec. 1, Ch. 360, L. 1977; Sec. 82-4303, R.C.M. 1947; (4), (5)En. Sec. 4, Ch. 380, L. 1973; Sec. 82-4304, R.C.M. 1947; R.C.M. 1947, 82-4303, 82-4304.

2-9-202. Apportionment of costs — creation of deductible reserve. (1) The department of administration shall apportion the costs of all insurance purchased under 2-9-201 to the individual state participants, and the costs shall be paid to the department subject to appropriations by the legislature.

(2) The department, if it elects to utilize a deductible insurance plan, is authorized to charge the individual state participants an amount equal to the cost of a full-coverage insurance plan until such time as a deductible reserve is established. In each subsequent year, the department may charge a sufficient amount over the actual cost of the deductible insurance to replenish such deductible reserves.

(3) The department may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages that in its discretion the department considers should be self-insured. Payments into the self-insurance reserve fund must be made from a legislative appropriation for that

purpose. Proceeds of the fund may be used only to pay claims under parts 1 through 3 of this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures shall be invested and all proceeds of the investment credited to the fund.

History: **En. Sec. 5, Ch. 380, L. 1973; amd. Sec. 2, Ch. 360, L. 1977; R.C.M. 1947, 82-4305.**

2-9-203 through 2-9-210 reserved.

2-9-211. Political subdivision insurance. (1) All political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part.

(2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve.

(3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose. Proceeds of the fund may be used only to pay claims under parts 1 through 3 of this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures shall be invested and all proceeds of the investment credited to the fund.

History: **En. Sec. 6, Ch. 380, L. 1973; amd. Sec. 3, Ch. 360, L. 1977; R.C.M. 1947, 82-4306.**

2-9-212. Political subdivision tax levy to pay premiums. Notwithstanding any provisions of law to the contrary, all political subdivisions may levy an annual property tax in the amount necessary to fund the premium for insurance, deductible reserve fund, and self-insurance reserve fund as herein authorized, even though as a result of such levy the maximum levy as otherwise restricted by law is exceeded thereby, provided that the revenues derived therefrom may not be used for any other purpose.

History: **En. Sec. 9, Ch. 380, L. 1973; amd. Sec. 4, Ch. 360, L. 1977; R.C.M. 1947, 82-4309.**

Part 3

Claims and Actions

2-9-301. Filing of claims against state and political subdivisions. (1) All claims against the state arising under the provisions of parts 1 through 3 of this chapter shall be presented to and filed with the department of administration.

(2) All claims against a political subdivision arising under the provisions of parts 1 through 3 shall be presented to and filed with the clerk or secretary of the political subdivision.

History: **(1)En. Sec. 11, Ch. 380, L. 1973; amd. Sec. 1, Ch. 361, L. 1975; amd. Sec. 5, Ch. 360, L. 1977; Sec. 82-4311, R.C.M. 1947; (2)En. Sec. 12, Ch. 380, L. 1973; amd. Sec. 6, Ch. 360, L. 1977; Sec. 82-4312, R.C.M. 1947; R.C.M. 1947, 82-4311, 82-4312.**

2-9-302. Time for filing — limitation of actions. A claim against the state or a political subdivision is subject to the limitation of actions provided by law.

History: En. 82-4312.1 by Sec. 7, Ch. 360, L. 1977; R.C.M. 1947, 82-4312.1.

2-9-303. Compromise or settlement of claim against state. The department of administration may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any. A settlement involving the self-insurance reserve fund or deductible reserve fund must be approved by the district court of Lewis and Clark County.

History: En. Sec. 19, Ch. 380, L. 1973; amd. Sec. 9, Ch. 360, L. 1977; R.C.M. 1947, 82-4319.

2-9-304. Compromise or settlement of claim against political subdivision. The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of the insurance, if any. A settlement involving a self-insurance reserve fund or deductible reserve fund must be approved by the district court where the claim is filed.

History: En. Sec. 18, Ch. 380, L. 1973; amd. Sec. 8, Ch. 360, L. 1977; R.C.M. 1947, 82-4318.

2-9-305. Governmental entity to be joined as defendant — immunization and indemnification of employees. (1) It is the purpose of this section to provide for the immunization and indemnification of public officers and employees sued for their actions, other than intentional tort or felonious acts, taken within the course and scope of their employment.

(2) In an action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission or other actionable conduct of the employee committed while acting within the course and scope of his office or employment, the governmental entity employer shall be made a party defendant to the action.

(3) Recovery against a governmental entity under the provisions of parts 1 through 3 of this chapter shall constitute a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. In any such action against a governmental entity, the employee whose conduct gave rise to the suit shall be immune from suit by reasons of the same subject matter if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of such employees' employment, unless the claim is based upon an intentional tort or felonious act of the employee.

(4) In any action in which a governmental entity employee is a party defendant, the employee shall be indemnified by the governmental entity employer for any money judgments or legal expenses to which he may be subject as a result of the suit unless the conduct upon which the claim is brought did not arise out of the course and scope of his employment or is an intentional tort or felonious act of the employee.

History: (1)En. 82-4322.1 by Sec. 1, Ch. 239, L. 1974; Sec. 82-4322.1, R.C.M. 1947; (2) thru (4)En. Sec. 23, Ch. 380, L. 1973; amd. Sec. 2, Ch. 239, L. 1974; Sec. 82-4323, R.C.M. 1947; R.C.M. 1947, 82-4322.1, 82-4323.

2-9-306. Construction of policy conditions — customary exclusions. Any insurance policy, rider, or endorsement issued and purchased after July 1, 1973, to insure against any risk which may arise as a result of the application of parts 1 through 3 of this chapter which contains any condition or provision not in compliance with the requirements of parts 1 through 3 shall not be rendered invalid thereby but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with parts 1 through 3, provided the policy is otherwise valid. This section may not be construed to prohibit any such insurance policy, rider, or endorsements from containing standard and customary exclusions of coverages that the department of administration considers reasonable and prudent upon considering the availability and the cost of such insurance coverages.

History: En. Sec. 8, Ch. 380, L. 1973; R.C.M. 1947, 82-4308; amd. Sec. 8, Ch. 184, L. 1979.

2-9-307 through 2-9-310 reserved.

2-9-311. Jurisdiction of district court — rules of procedure. The district court shall have jurisdiction over any action brought under parts 1 through 3 of this chapter, and such actions shall be governed by the Montana Rules of Civil Procedure insofar as they are consistent with such parts.

History: En. Sec. 20, Ch. 380, L. 1973; R.C.M. 1947, 82-4320.

2-9-312. Venue of actions. (1) Actions against the state shall be brought in the county in which the cause of action arose or in Lewis and Clark County. In addition, a resident of the state may bring an action in the county of his residence.

(2) Actions against a political subdivision shall be brought in the county in which the cause of action arose or in any county where the political subdivision is located.

History: En. Sec. 21, Ch. 380, L. 1973; R.C.M. 1947, 82-4321.

2-9-313. Service of process on state. In all actions against the state, the state shall be named the defendant, and the summons and complaint shall be served on the director of the department of administration in addition to service required by Rule 4D(2)(h), M.R.Civ.P.

History: En. Sec. 22, Ch. 380, L. 1973; R.C.M. 1947, 82-4322; amd. Sec. 1, Ch. 604, L. 1979.

2-9-314. Court approval of attorney's fee. (1) When an attorney represents or acts on behalf of a claimant or any other party on a tort claim against the state or a political subdivision thereof, the attorney shall file with the claim a copy of the contract of employment showing specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The district court may regulate the amount of the attorney's fee in any tort claim against the state or a political subdivision thereof. In regulating the amount of the fee, the court shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the court may consider appropriate.

(3) Attorneys' fees regulated under this section shall be made a part of the court record and are open to the public.

(4) If an attorney violates a provision of this section, a rule of court adopted under this section, or an order fixing attorney's fees under this section, he forfeits the right to any fee which he may have collected or been entitled to collect.

History: En. 82-4316.1 by Sec. 1, Ch. 188, L. 1977; R.C.M. 1947, 82-4316.1.

2-9-315. Recovery from appropriations if no insurance. In the event no insurance has been procured by the state to pay a claim or judgment arising under the provisions of parts 1 through 3 of this chapter, the claim or judgment shall be paid from the next appropriation of the state instrumentality whose tortious conduct gave rise to the claim.

History: En. Sec. 25, Ch. 380, L. 1973; R.C.M. 1947, 82-4325.

2-9-316. Judgments against governmental entities except state. A political subdivision of the state shall satisfy a final judgment out of funds that may be available from the following sources:

(1) insurance;

(2) the general fund or any other funds legally available to the governing body;

(3) a property tax, otherwise properly authorized by law, collected by a special levy authorized by law, in an amount necessary to pay any unpaid portion of the judgment, except that such levy may not exceed 10 mills;

(4) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the payment of the judgment liability. The governing body of a county, city, or school district is hereby authorized to issue such bonds pursuant to procedures established by law. Property taxes may be levied to amortize such bonds, provided the levy for payment of any such bonds or judgments may not exceed, in the aggregate, 10 mills annually.

History: En. 82-4335 by Sec. 10, Ch. 360, L. 1977; R.C.M. 1947, 82-4335(1).

2-9-317. No interest if judgment paid within two years. If a governmental entity pays a judgment within 2 years after the day on which the judgment is entered, no penalty or interest may be assessed against the governmental entity.

History: En. 82-4335 by Sec. 10, Ch. 360, L. 1977; R.C.M. 1947, 82-4335(2).

2-9-318. Attachment and execution. No levy of attachment or writ of execution shall issue against any property of a governmental entity for the security or collection of any claim or judgment against any governmental entity under parts 1 through 3 of this chapter.

History: En. Sec. 28, Ch. 380, L. 1973; R.C.M. 1947, 82-4327.

Part 4 reserved

Part 5

General Provisions Related to Official Bonds

2-9-501. Application — state official and employee bonds excepted. The provisions of this part apply to the bonds of county, town, or township officers; the official bond of any executor, administrator, guardian; or the bond or undertaking of any person where by law a bond or undertaking is required except state officers and employees.

History: En. Sec. 1084, Pol. C. 1895; amd. Sec. 7, p. 82, L. 1899; re-en. Sec. 412, Rev. C. 1907; re-en. Sec. 503, R.C.M. 1921; Cal. Pol. C. Sec. 981; amd. Sec. 1, Ch. 17, L. 1935; re-en. Sec. 503, R.C.M. 1935; amd. Sec. 7, Ch. 134, L. 1941; amd. Sec. 8, Ch. 177, L. 1965; R.C.M. 1947, 6-331.

2-9-502. Bonds of deputies. Every officer or body appointing a deputy, clerk, or subordinate officer may require an official bond to be given by the person appointed and may fix the amount thereof.

History: En. Sec. 1088, Pol. C. 1895; re-en. Sec. 416, Rev. C. 1907; re-en. Sec. 507, R.C.M. 1921; Cal. Pol. C. Sec. 985; re-en. Sec. 507, R.C.M. 1935; R.C.M. 1947, 6-335.

2-9-503. Bond of appointee. Any person appointed to fill a vacancy, before entering upon the duties of the office, must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as herein provided.

History: En. Sec. 1074, Pol. C. 1895; re-en. Sec. 402, Rev. C. 1907; re-en. Sec. 493, R.C.M. 1921; Cal. Pol. C. Sec. 971; re-en. Sec. 493, R.C.M. 1935; R.C.M. 1947, 6-324.

2-9-504. Conditions, form, and signatures. (1) The condition of every official bond must be that the principal shall well, truly, and faithfully perform all official duties then required of him by law and also such additional duties as may be imposed on him by any law of the state subsequently enacted and that he will account for and pay over and deliver to the person or officer entitled to receive the same all moneys or other property that may come into his hands as such officer.

(2) The principal and sureties upon any official bond are also in all cases liable for the neglect, default, or misconduct in office of any deputy, clerk, or employee appointed or employed by such principal.

(3) All official bonds must be signed and executed by the principal and two or more sureties or by the principal and one or more surety companies organized as such under the laws of this state or licensed to do business herein.

(4) All official bonds must be in form joint and several and made payable to the state of Montana in such penalty and with such conditions as required by this part or the law creating or regulating the duties of the office.

History: (1) thru (3)En. Sec. 1057, Pol. C. 1895; amd. Sec. 2, p. 79, L. 1899; re-en. Sec. 384, Rev. C. 1907; re-en. Sec. 475, R.C.M. 1921; Cal. Pol. C. Sec. 954; re-en. Sec. 475, R.C.M. 1935; Sec. 6-306, R.C.M. 1947; (4)En. Sec. 1061, Pol. C. 1895; re-en. Sec. 388, Rev. C. 1907; re-en. Sec. 479, R.C.M. 1921; Cal. Pol. C. Sec. 958; re-en. Sec. 479, R.C.M. 1935; Sec. 6-310, R.C.M. 1947; R.C.M. 1947, 6-306, 6-310.

2-9-505. Bonds of receivers, assignees — payable to state. All bonds or undertakings given by trustees, receivers, assignees, or officers of a court in an action or proceeding for the faithful discharge of their duties, where it is not otherwise provided, must be in the name of and payable to the state and, upon the order of the court where such action or proceeding is pending, may be prosecuted for the benefit of any and all interested therein.

History: En. Sec. 1085, Pol. C. 1895; re-en. Sec. 413, Rev. C. 1907; re-en. Sec. 504, R.C.M. 1921; Cal. Pol. C. Sec. 982; re-en. Sec. 504, R.C.M. 1935; R.C.M. 1947, 6-332.

2-9-506. Approval, filing, record, and custody. (1) The approval of every official bond must be endorsed thereon and signed by the officer approving the same. No officer with whom any official bond is required to be filed must file such bond until approved.

(2) Every official bond must be filed in the proper office within the time prescribed for filing the oath unless otherwise expressly provided by statute.

(3) Official bonds must be recorded in a book kept for the purpose and entitled "Record of Official Bonds".

(4) Every officer with whom official bonds are filed must carefully keep and preserve the same and give certified copies thereof to any person demanding the same upon being paid the same fees as are allowable by law for certified copies of papers in other cases.

History: (1)Ap. p. Sec. 1055, Pol. C. 1895; re-en. Sec. 382, Rev. C. 1907; re-en. Sec. 473, R.C.M. 1921; Cal. Pol. C. Sec. 952; re-en. Sec. 473, R.C.M. 1935; Sec. 6-304, R.C.M. 1947; Ap. p. Sec. 1056, Pol. C. 1895; re-en. Sec. 383, Rev. C. 1907; re-en. Sec. 474, R.C.M. 1921; Cal. Pol. C. Sec. 953; re-en. Sec. 474, R.C.M. 1935; Sec. 6-305, R.C.M. 1947; (2)En. Sec. 1050, Pol. C. 1895; re-en. Sec. 377, Rev. C. 1907; re-en. Sec. 468, R.C.M. 1921; Cal. Pol. C. Sec. 947; re-en. Sec. 468, R.C.M. 1935; Sec. 6-301, R.C.M. 1947; (3)En. Sec. 1054, Pol. C. 1895; re-en. Sec. 381, Rev. C. 1907; re-en. Sec. 472, R.C.M. 1921; Cal. Pol. C. Sec. 951; re-en. Sec. 472, R.C.M. 1935; Sec. 6-303, R.C.M. 1947; (4)En. Sec. 1060, Pol. C. 1895; re-en. Sec. 387, Rev. C. 1907; re-en. Sec. 478, R.C.M. 1921; Cal. Pol. C. Sec. 957; re-en. Sec. 478, R.C.M. 1935; Sec. 6-309, R.C.M. 1947; R.C.M. 1947, 6-301, 6-303, 6-304, 6-305, 6-309.

2-9-507. Sureties' qualifications. (1) The individual sureties on all official bonds must justify before an officer authorized to administer oaths by an affidavit to the effect that they are residents and householders or freeholders within the state and that each is worth the sum for which he becomes surety in said bond over and above his just debts and liabilities, exclusive of property exempt from execution.

(2) No surety company or corporation organized under or that has complied with the laws of this state and has been duly licensed to do business as such herein shall be required to justify as a surety. No such company or corporation shall be accepted as a surety in any case when its liabilities exceed its assets, as ascertained in the manner provided by law.

(3) No member of the board of county commissioners can be accepted as a surety upon the official bond of any county, township, or school district officer in his county, nor must any county officer become a surety upon the official bond of any other county officer.

History: En. Sec. 1058, Pol. C. 1895; amd. Sec. 3, p. 80, L. 1899; re-en. Sec. 385, Rev. C. 1907; re-en. Sec. 476, R.C.M. 1921; Cal. Pol. C. Sec. 955; re-en. Sec. 476, R.C.M. 1935; R.C.M. 1947, 6-307.

2-9-508 through 2-9-510 reserved.

2-9-511. Extent of sureties' liability — when less than full. (1) Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein for any and all breaches of the conditions thereof committed during the time such officer continues to discharge any of the duties of or hold the office and whether such breaches are committed or suffered by the principal officer, his deputy, or clerk.

(2) Every such bond is in force and obligatory upon the principal and sureties therein for the faithful discharge of all duties which may be required

of such officer by any law enacted subsequently to the execution of such bond, and such condition must be expressed therein.

(3) When the penal sum of any bond required to be given amounts to more than $1,000, the sureties may become severally liable for portions not less than $500, making in the aggregate a liability of double the amount named as the penal sum of the bond. If any such bond becomes forfeited, an action may be brought thereon against any or all of the obligors and judgment entered against them, either jointly or severally, as they may be liable. The judgment must not be entered against a surety severally bound for a greater sum than that for which he is specially liable by the terms of the bond. Each surety is liable to contribute to his cosureties in proportion to the amount for which he is liable.

History: (1)En. Sec. 1062, Pol. C. 1895; re-en. Sec. 389, Rev. C. 1907; re-en. Sec. 480, R.C.M. 1921; Cal. Pol. C. Sec. 959; re-en. Sec. 480, R.C.M. 1935; Sec. 6-311, R.C.M. 1947; (2)En. Sec. 1063, Pol. C. 1895; re-en. Sec. 390, Rev. C. 1907; re-en. Sec. 481, R.C.M. 1921; Cal. Pol. C. Sec. 960; re-en. Sec. 481, R.C.M. 1935; Sec. 6-312, R.C.M. 1947; (3)En. Sec. 1059, Pol. C. 1895; amd. Sec. 1, p. 112, L. 1897; amd. Sec. 4, p. 80, L. 1899; re-en. Sec. 386, Rev. C. 1907; re-en. Sec. 477, R.C.M. 1921; Cal. Pol. C. Sec. 956; re-en. Sec. 477, R.C.M. 1935; Sec. 6-308, R.C.M. 1947; R.C.M. 1947, 6-308, 6-311, 6-312.

2-9-512. Defects not to affect liability. (1) Whenever an official bond does not contain the substantial matter or conditions required by law or there are any defects in the approval or filing thereof, it is not void so as to discharge such officer and sureties, but they are equitably bound to the state or party interested and the state or such party may, by action in any court of competent jurisdiction, suggest the defect in the bond, approval, or filing and recover the proper and equitable demand or damages from such officer and the persons who intended to become and were included as sureties in such bond.

(2) No official bond entered into by any officer or any bond, recognizance, or written undertaking taken by any officer in the discharge of the duties of his office shall be void for want of form, substance, recital, or condition or the principal or surety be discharged. The principal and surety shall be bound by such bond, recognizance, or written undertaking to the full extent contemplated by the law requiring the same and the sureties to the amount specified in the bond or recognizance or written undertaking. In all actions on a defective bond, recognizance, or written undertaking, the plaintiff or relator may suggest the defect in his complaint and recover to the same extent as if such bond, recognizance, or written undertaking were perfect in all respects.

History: (1)En. Sec. 1066, Pol. C. 1895; re-en. Sec. 393, Rev. C. 1907; re-en. Sec. 484, R.C.M. 1921; Cal. Pol. C. Sec. 963; re-en. Sec. 484, R.C.M. 1935; Sec. 6-315, R.C.M. 1947; (2)En. Sec. 1, Ch. 193, L. 1907; re-en. Sec. 394, Rev. C. 1907; re-en. Sec. 485, R.C.M. 1921; re-en. Sec. 485, R.C.M. 1935; Sec. 6-316, R.C.M. 1947; R.C.M. 1947, 6-315, 6-316.

2-9-513. Insufficiency of sureties — action to vacate office. (1) Whenever it is shown by the affidavit of a credible witness or otherwise comes to the knowledge of the court, judge, board, person, or body whose duty it is to approve the official bond of any officer that the sureties on any bond given pursuant to the provisions of this part or any one of them have, since such bond was approved, died, removed from the state, become insolvent, or from any other cause have become incompetent or insufficient sureties on such bond, the court, judge, board, officer, or other person may issue a citation to such officer requiring him on a day therein named, not less than 5 or more than 10 days after date, to appear and show cause why such office should not be vacated, which citation must be served and return thereof made as in other cases.

(2) If the officer fails to appear and show good cause why such office should not be vacated on the day named or fails to give ample additional security, the court, judge, board, officer, or other person must make an order vacating the office. The same must be filled as approved by law.

History: En. Sec. 1067; Pol. C. 1895; amd. Sec. 5, p. 81, L. 1899; re-en. Sec. 395, Rev. C. 1907; re-en. Sec. 486, R.C.M. 1921. Cal. Pol. C. Sec. 964; re-en. Sec. 486, R.C.M. 1935; R.C.M. 1947, 6-317.

2-9-514. Additional security. (1) The additional bond given pursuant to 2-9-513(2) must be in such penalty as directed by the court, judge, board, officer, or other person and in all other respects similar to the original bond and approved by and filed with the same officer as required in case of the approval and filing of the original bond.

(2) Every such additional bond so filed and approved is of like force and obligation upon the principal and sureties therein, from the time of its execution, and subjects the officer and his sureties to the same liabilities, suits, and actions as are prescribed respecting the original bonds of officers.

(3) In no case is the original bond discharged or affected when an additional bond has been given, but the same remains of like force and obligation as if such additional bond had not been given.

History: (1), (2)En. Sec. 1068, Pol. C. 1895; re-en. Sec. 396, Rev. C. 1907; re-en. Sec. 487, R.C.M. 1921; Cal. Pol. C. Sec. 965; re-en. Sec. 487, R.C.M. 1935; Sec. 6-318, R.C.M. 1947; (3)En. Sec. 1069, Pol. C. 1895; re-en. Sec. 397, Rev. C. 1907; re-en. Sec. 488, R.C.M. 1921; Cal. Pol. C. Sec. 966; re-en. Sec. 488, R.C.M. 1935; Sec. 6-319, R.C.M. 1947; R.C.M. 1947, 6-318, 6-319; amd. Sec. 9, Ch. 184, L. 1979.

2-9-515. Additional security — liability of officers and sureties. The officer and his sureties are liable to any party injured by the breach of any condition of an official bond, after the execution of the additional bond, upon either or both bonds. Such party may bring his action upon either bond, or he may bring separate actions on the bonds respectively. He may allege the same cause of action and recover judgment therefor in each suit.

History: En. Sec. 1070, Pol. C. 1895; re-en. Sec. 398, Rev. C. 1907; re-en. Sec. 489, R.C.M. 1921; Cal. Pol. C. Sec. 967; re-en. Sec. 489, R.C.M. 1935; R.C.M. 1947, 6-320.

2-9-516. Separate judgments. If separate judgments are recovered on the bonds by such party for the same cause of action, he is entitled to have execution issued on such judgments respectively but he must only collect, by execution or otherwise, the amount actually adjudged to him on the same causes of action in one of the suits, together with the costs of both suits.

History: En. Sec. 1071, Pol. C. 1895; re-en. Sec. 399, Rev. C. 1907; re-en. Sec. 490, R.C.M. 1921; Cal. Pol. C. Sec. 968; re-en. Sec. 490, R.C.M. 1935; R.C.M. 1947, 6-321.

2-9-517. Contribution between sureties. Whenever the sureties on either bond have been compelled to pay any sum of money on account of the principal obligor therein, they are entitled to recover in any court of competent jurisdiction of the sureties on the remaining bond a distributive part of the sum thus paid in the proportion which the penalties of such bonds bear one to the other and to the sums thus paid, respectively.

History: En. Sec. 1072, Pol. C. 1895; re-en. Sec. 400, Rev. C. 1907; re-en. Sec. 491, R.C.M. 1921; Cal. Pol. C. Sec. 969; re-en. Sec. 491, R.C.M. 1935; R.C.M. 1947, 6-322.

2-9-518 through 2-9-520 reserved.

2-9-521. Discharge of sureties. Whenever any sureties on the official bond of any officer wish to be discharged from their liability, they and such officer may procure the same to be done if such officer will execute a new bond in accordance with the provisions of this part in like form, penalty, and conditions, and to be approved and filed as the original bond. Upon the filing and approval of the new bond, such first sureties are exonerated from all further liability, but their bond remains in full force as to all liabilities incurred previous to the approval of such new bond. The liability of the principal and surety or sureties in such new bond is in all respects the same and may be enforced in like manner as the liability of the principal and sureties of the original bond.

History: En. Sec. 1073, Pol. C. 1895; amd. Sec. 6, p. 81, L. 1899; re-en. Sec. 401, Rev. C. 1907; re-en. Sec. 492, R.C.M. 1921; Cal. Pol. C. Sec. 970; re-en. Sec. 492, R.C.M. 1935; R.C.M. 1947; 6-323.

2-9-522. Release of sureties. Any surety on the official bond of any county, city, town, or township officer or on the official bond of any executor, administrator, guardian or on the bond or undertaking of any person where by law a bond or undertaking is required may be released from all liability thereon accruing from and after proper proceedings had therefor, as provided in this part.

History: En. Sec. 1075, Pol. C. 1895; re-en. Sec. 403, Rev. C. 1907; re-en. Sec. 494, R.C.M. 1921; Cal. Pol. C. Sec. 972; re-en. Sec. 494, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1941; amd. Sec. 6, Ch. 177, L. 1965; R.C.M. 1947, 6-325.

2-9-523. Proceedings to obtain release. (1) Any surety desiring to be released from liability on the bond of any county or township officer shall file a statement in writing, duly subscribed by himself or someone in his behalf setting forth the name and office of the person for whom he is surety, the amount for which he is liable as such, and his desire to be released from further liability on account thereof.

(2) A notice containing the object of such statement shall be served personally on the principal unless he shall have left the state or his whereabouts cannot after due and diligent search and inquiry be ascertained, in which case the same may be served by publication once a week for four successive publications in some newspaper of general circulation published in the county where the bond is filed on record. The statement, except when the county clerk or county commissioners are principals, shall be filed with the county clerk. When the county clerk or county commissioners are principals, the statement shall be filed with the district judge.

(3) Any surety desiring to be released from liability on the bond of any city or town officer shall file and serve a similar statement with the city or town clerk or mayor.

(4) Any surety desiring to be released from an executor's, administrator's, or guardian's bond or undertaking shall file and serve a similar statement

with the proper officer, person, or authority where the bond is filed on record.

(5) All statements provided for in this section must be served personally on the principal as in this section provided if he can be found for service in the state; if not, he may be served by publication in a newspaper at the county seat as hereinbefore provided, or if no newspaper be published thereat, then in an adjoining county, without any order from any court or other authority. In all cases for which publication is provided, a printed or written notice posted in at least 10 conspicuous places in the county for the time specified for publication of said notice shall be deemed legal notice thereof.

History: En. Sec. 2, Ch. 134, L. 1941; amd. Sec. 7, Ch. 177, L. 1965; R.C.M. 1947, 6-326.

2-9-524. Amount of new bond — failure to file. (1) Whenever a statement is filed or filed and served as herein provided, the proper authority shall prescribe the penalty or amount in which a new or additional bond or undertaking shall be filed unless already provided by statute. If no such order be made, then such new or additional bond or undertaking shall be executed for the same amount as the original.

(2) If any officer or person shall fail to file within 20 days from the date of personal service or within 40 days from the date of the first publication or of posting notice, as provided herein, a new or additional bond or undertaking, the office or appointment of the person or officer so failing shall become vacant and such officer or person shall forfeit his office or appointment. The same shall be filled as in other cases of vacancy and in the manner provided by law.

(3) The person applying to be released from liability on such bond or undertaking shall not be holden or liable thereon after the date herein provided for the vacating and forfeiting of such office or appointment.

History: En. Secs. 3, 5, Ch. 134, L. 1941; R.C.M. 1947, 6-327, 6-329.

2-9-525. Liability of sureties when new bond is given. In case a new or additional undertaking be filed, the sureties on the original undertaking not asking to be released and on the new or additional bond or undertaking shall be and continue liable for the official acts of such officer or person, jointly and severally, the same as if all were sureties on one and the same instrument. This shall not be deemed to provide retroactive liability on the new surety.

History: En. Sec. 4, Ch. 134, L. 1941; R.C.M. 1947, 6-328.

2-9-526. Effect of discharge of sureties. No surety must be released from damages or liabilities for acts, omissions, or causes existing or which arose before discharge of the surety as hereinbefore provided, but such legal proceedings may be had therefor in all respects as though no such discharge had been had.

History: En. Sec. 1083, Pol. C. 1895; re-en. Sec. 411, Rev. C. 1907; re-en. Sec. 502, R.C.M. 1921; Cal. Pol. C. Sec. 980; re-en. Sec. 502, R.C.M. 1935; amd. Sec. 6, Ch. 134, L. 1941; R.C.M. 1947, 6-330.

2-9-527. Suit on bonds. (1) Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein to and for the state and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity. Any person so injured or aggrieved may bring suit on such bond, in his own name, without an assignment thereof.

(2) No such bond is void on the first recovery of a judgment thereon. Suit may be afterwards brought, from time to time, and judgment recovered thereon by the state or by any person to whom a right of action has accrued against such officer and his sureties until the whole penalty of the bond is exhausted.

History: (1)En. Sec. 1064, Pol. C. 1895; re-en. Sec. 391, Rev. C. 1907; re-en. Sec. 482, R.C.M. 1921; Cal. Pol. C. Sec. 961; re-en. Sec. 482, R.C.M. 1935; Sec. 6-313, R.C.M. 1947; (2)En. Sec. 1065, Pol. C. 1895; re-en. Sec. 392, Rev. C. 1907; re-en. Sec. 483, R.C.M. 1921; Cal. Pol. C. Sec. 962; re-en. Sec. 483, R.C.M. 1935; Sec. 6-314, R.C.M. 1947; R.C.M. 1947, 6-313, 6-314.

2-9-528. Lien on real estate of surety — action to compel specific performance. (1) When an action is commenced in any court in this state, for the benefit to the state, to enforce the penalty of or to recover money upon an official bond or obligation or any bond or obligation executed in favor of the state of Montana or of the people of this state, the attorney or other person prosecuting the action may file with the clerk of the court in which the action is commenced an affidavit stating either positively or on information and belief that such bond or obligation was executed by the defendant or one or more of the defendants (designating whom) and made payable to the people of the state or to the state and that the defendant or defendants have real estate or some interest in lands (designating the county or counties in which the same is situated) and that the action is prosecuted for the benefit of the state. The clerk of the court receiving such affidavit must certify to the county clerk in which such real estate is situated the names of the parties to the action, the name of the court in which the action is pending, and the amount claimed in the complaint, with the date of the commencement of the suit.

(2) Upon receiving such certificate, the county clerk must endorse upon it the time of its reception. Such certificate must be filed in the same manner as notices of the pendency of action affecting real estate. Any judgment recovered in such action is a lien upon all real estate belonging to the defendant situated in any county in which such certificate is so filed or to one or more of such defendants, for the amount the owner thereof is or may be liable upon the judgment, from the filing of this certificate.

(3) In any action to compel the specific performance of an agreement to sell real estate affected by the lien created by the filing of the certificate mentioned in subsection (2) which agreement was made prior to the filing of such certificate, but the purchase price thereof is not due until after the filing of said certificate, the judge of the district court in which said action for specific performance is tried must, if the purchaser is otherwise entitled to specific performance of such agreement, order the said purchaser to pay the purchase price, or so much thereof as may be due, to the state treasurer, taking his receipt therefor. Upon such payment, the purchaser is entitled to enforce the specific performance of the agreement and take said real estate free from the liens created by the filing of said certificate. The moneys so paid to the state treasurer must be held by him, pending the litigation mentioned in said certificate and subject to the lien created by the filing of said

certificate. If judgment is recovered against the defendant, the state treasurer in his settlement must pay to the county treasurer entitled to the same the amount due the county.

History: (1)En. Sec. 1086, Pol. C. 1895; re-en. Sec. 414, Rev. C. 1907; re-en. Sec. 505, R.C.M. 1921; Cal. Pol. C. Sec. 983; re-en. Sec. 505, R.C.M. 1935; Sec. 6-333, R.C.M. 1947; (2)En. Sec. 1087, Pol. C. 1895; re-en. Sec. 415, Rev. C. 1907; re-en. Sec. 506, R.C.M. 1921; Cal. Pol. C. Sec. 984; re-en. Sec. 506, R.C.M. 1935; Sec. 6-334, R.C.M. 1947; (3)En. Sec. 1090, Pol. C. 1895; re-en. Sec. 418, Rev. C. 1907; re-en. Sec. 509, R.C.M. 1921; Cal. Pol. C. Sec. 987; re-en. Sec. 509, R.C.M. 1935; Sec. 6-337, R.C.M. 1947; R.C.M. 1947, 6-333, 6-334, 6-337.

Part 6

Bonds of State Officers and Employees

2-9-601. Definition. As used in this part, the term "state officers and employees" does not include notaries public, supreme court justices, district court judges, or members and employees of the legislature.

History: En. Sec. 1, Ch. 177, L. 1965; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 6-105(part).

2-9-602. Officers and employees to be bonded — coverage, form, amount. (1) All state officers and employees shall be bonded.

(2) A bond may cover an individual officer or employee or group of officers and employees. The form of all bonds shall be prescribed by the department of administration, subject to the approval of the attorney general.

(3) Before determining the amount for which a state officer or employee shall be bonded, the department of administration shall consult with the head of the institution or agency involved and the head of the agency responsible for the examination or post auditing of state agencies. The amount for which a state officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation.

History: (1), (2)En. Sec. 1, Ch. 177, L. 1965; amd. Sec. 98, Ch. 326, L. 1974; Sec. 6-105, R.C.M. 1947; (3)En. Sec. 2, Ch. 177, L. 1965; amd. Sec. 1, Ch. 326, L. 1974; Sec. 6-106, R.C.M. 1947; R.C.M. 1947, 6-105(part), 6-106(part).

2-9-603. Purchase. (1) The department of administration shall purchase all surety bonds for state officers and employees.

(2) All bonds shall be purchased by competitive bid.

(3) Bonds purchased by the department of administration shall be executed by responsible insurance or surety companies admitted and authorized to execute surety bonds in this state.

History: (1)En. Sec. 1, Ch. 177, L. 1965; amd. Sec. 98, Ch. 326, L. 1974; Sec. 6-105, R.C.M. 1947; (2)En. Sec. 2, Ch. 177, L. 1965; amd. Sec. 1, Ch. 326, L. 1974; Sec. 6-106, R.C.M. 1947; (3)En. Sec. 3, Ch. 177, L. 1965; amd. Sec. 98, Ch. 326, L. 1974; Sec. 6-107, R.C.M. 1947; R.C.M. 1947, 6-105(part), 6-106(part), 6-107.

2-9-604. Proration of bond premiums. (1) The department of administration shall prorate the premiums for bonds covering more than one state agency or institution among the state agencies and institutions whose officers and employees are covered. Such proration shall be based on the risk of bonding the officers and employees of each agency or institution.

(2) The department of administration shall order payment of the prorated amount from moneys which are available to such agencies or institutions for the payment of general administrative expenses.

History: En. Sec. 4, Ch. 177, L. 1965; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 6-108.

Part 7

Bonds of County Officers and Employees

2-9-701. County officers and employees to be bonded — form — conditions of group bonds. (1) All elected and appointed county officers and employees shall be bonded.

(2) The form of bonds for county officers and employees must be approved by the county attorney and filed and recorded in the office of the county clerk and recorder.

(3) A bond may cover an individual officer or employee, or a blanket bond may cover all officers and employees or any group or combination of county officers and employees.

(4) All official bonds covering a group of county officers or employees shall be made upon the same conditions as are required of a principal under subsections (1) through (3) of 2-9-504, except that the bond need not be signed by each officer or employee.

History: En. Secs. 1, 2, 6, 7, Ch. 68, L. 1967; R.C.M. 1947, 6-203(part), 6-204(part), 6-208, 6-209.

2-9-702. Amount. (1) The amount for which a county officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation.

(2) The amount for which a county officer or employer or group of officers or employees shall be bonded is subject to the supervision of the department of community affairs. If the department of community affairs determines that the amount of the bond is inadequate, it may require the board of county commissioners to purchase an adequate bond.

History: (1)En. Sec. 2, Ch. 68, L. 1967; Sec. 6-204, R.C.M. 1947; (2)En. Sec. 3, Ch. 68, L. 1967; amd. Sec. 46, Ch. 348, L. 1974; amd. Sec. 7, Ch. 213, L. 1975; Sec. 6-205, R.C.M. 1947; R.C.M. 1947, 6-204(part), 6-205.

2-9-703. Purchase. (1) The board of county commissioners shall purchase all surety bonds for county officers and employees.

(2) The board of county commissioners shall actively solicit offers on a competitive basis from available qualified insurance or surety companies before purchasing the bonds.

(3) Bonds purchased by the board of county commissioners shall be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in this state.

History: En. Secs. 1, 2, 4, Ch. 68, L. 1967; R.C.M. 1947, 6-203(part), 6-204(part), 6-206.

2-9-704. Premiums charged against budgets. The premiums for all surety company bonds shall be a proper charge against the budgets of the county general fund or against the budget or budgets of those county funds where the officer or employee renders service.

History: En. Sec. 5, Ch. 68, L. 1967; R.C.M. 1947, 6-207.

2-9-705 through 2-9-710 reserved.

2-9-711. Actions against a sheriff for official acts. If an action be brought against a sheriff for an act done by virtue of his office and he give written notice thereof to the sureties on any bond of indemnity received by him, the judgment recovered therein shall be conclusive evidence of his right to recover against such sureties. The court may, on motion, upon notice of 5 days, order judgment to be entered up against them for the amount so recovered, including costs.

History: En. Sec. 431, p. 130, Bannack Stat.; re-en. Sec. 591, p. 156, Cod. Stat. 1871; re-en. Sec. 516, p. 176, L. 1877; re-en. Sec. 516, 1st Div. Rev. Stat. 1879; re-en. Sec. 533, 1st Div. Comp. Stat. 1887; amd. Sec. 1898, C. Civ. Proc. 1895; re-en. Sec. 7191, Rev. C. 1907; re-en. Sec. 9824, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1055; re-en. Sec. 9824, R.C.M. 1935; R.C.M. 1947, 93-8709.

Part 8

Bonds of City Officers and Employees

2-9-801. Application to commission and commission-manager forms of government. This part applies to the bonding of all elected or appointed officers and employees under the commission form of city government and to the commission-manager form of city government.

History: En. Sec. 8, Ch. 67, L. 1967; R.C.M. 1947, 6-608.

2-9-802. Bonds — amount. (1) All elected or appointed city or town officers and employees shall be bonded in such sums as the ordinance may require. The amount for which a city or town officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation.

(2) The amount for which a city or town officer or employee or group of officers or employees shall be bonded is subject to the supervision of the department of community affairs. If the department of community affairs determines that the amount of the bond is inadequate, it may require the city or town council or commission to purchase an adequate bond.

History: (1)En. Sec. 2, Ch. 67, L. 1967; Sec. 6-602, R.C.M. 1947; (2)En. Sec. 3, Ch. 67, L. 1967; amd. Sec. 47, Ch. 348, L. 1974; amd. Sec. 8, Ch. 213, L. 1975; Sec. 6-603, R.C.M. 1947; R.C.M. 1947, 6-602(part), 6-603.

2-9-803. Form — coverage — approval. (1) A bond may cover an individual officer or employee or a blanket bond may cover all officers and employees or any group or combination of officers and employees.

(2) All official bonds covering a group of city or town officers or employees shall be made upon the same conditions as are required of a principal under subsections (1) through (3) of 2-9-504, except that the bond need not be signed by each officer and employee.

(3) The form of bonds for city or town officers and employees must be approved by the city or town attorney and filed and recorded in the office of the city or town clerk.

History: En. Secs. 1, 5, 6, Ch. 67, L. 1967; R.C.M. 1947, 6-601(part), 6-605, 6-606.

2-9-804. Purchase — responsible surety. (1) The city or town council or commissioners shall purchase all surety bonds for city officers and employees.

(2) The city or town council or commission shall actively solicit offers on a competitive bases from available qualified insurance or surety companies before purchasing the bonds.

(3) Bonds purchased by the city or town council or commission shall be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in this state.

History: En. Secs. 1, 2, 4, Ch. 67, L. 1967; R.C.M..1947, 6-601(part), 6-602(part), 6-604.

2-9-805. Premiums — charge against budget. The premiums for all surety company bonds shall be a proper charge against the budget or budgets of the city or town general fund or against the budget or budgets of those city or town funds where the officer or employee renders service.

History: En. Sec. 7, Ch. 67, L. 1967; R.C.M. 1947, 6-607.

CHAPTERS 10 THROUGH 14

RESERVED

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2-15-412. Board of state canvassers.
2-15-413. Repealed. Sec. 407, Ch. 571, L. 1979.

Part 5 — Attorney General

2-15-501. General duties.
2-15-502. Qualification of assistants.

Part 6 — State Auditor

2-15-601. State auditor.
2-15-602. Deputy state auditor.

Part 7 — Superintendent of Public Instruction

2-15-701. Superintendent of public instruction.

Parts 8 and 9 reserved

Part 10 — Department of Administration

2-15-1001. Department of administration — head.
2-15-1002. Ex officio state treasurer.
Sections 2-15-1003 and 2-15-1004 reserved.
2-15-1005. Board of investments — allocation — composition — quasi-judicial.
2-15-1006. Merit system council — allocation — composition.
2-15-1007. Board of examiners — allocation.
2-15-1008. Board of housing — allocation — composition — quasi-judicial.
2-15-1009. Public employees' retirement board — terms — allocation.
2-15-1010. Teachers' retirement board — terms — allocation.
2-15-1011. State agency for surplus property.
2-15-1012. Repealed. Sec. 14, Ch. 555, L. 1979.
2-15-1013. Records committee — composition and meetings.
2-15-1014. Office of workers' compensation judge — allocation — appointment — salary.
2-15-1015. State tax appeal board.
2-15-1016. State employee group benefits advisory council — composition.
2-15-1017. Publishing policy committee.

Part 11 — Department of Community Affairs

2-15-1101. Department of community affairs — head.
2-15-1102. Board of county printing — composition — allocation — compensation.
2-15-1103. Board of aeronautics — qualification — allocation — quasi-judicial.
2-15-1104. Coal board — allocation — composition.
Sections 2-15-1105 through 2-15-1110 reserved.
2-15-1111. Office of state coordinator of Indian affairs.
2-15-1112. Legislative policy.
2-15-1113. Duties and assistance.

Part 12 — Department of Military Affairs

2-15-1201. Department of military affairs — head.
2-15-1202. Adjutant general — qualifications — salary.
2-15-1203. Assistant adjutant generals.

2-15-1204. Division of disaster and emergency services.

Part 13 — Department of Revenue

2-15-1301. Department of revenue — head.
2-15-1302. Director of revenue.
Sections 2-15-1303 through 2-15-1310 reserved.
2-15-1311. Advisory council for Multistate Tax Compact.

Part 14 reserved

Part 15 — Education

2-15-1501. State board of education.
Sections 2-15-1502 through 2-15-1504 reserved.
2-15-1505. Board of regents of higher education.
2-15-1506. Commissioner of higher education.
2-15-1507. Board of public education.
2-15-1508. Appointments to board of public education and board of regents — conditions — vacancy.
Sections 2-15-1509 and 2-15-1510 reserved.
2-15-1511. Agencies allocated to state board of education.
2-15-1512. Boards and offices associated with state historical society.
2-15-1513. Montana arts council.
2-15-1514. State library commission.
2-15-1515. Commission on federal higher education programs.
2-15-1516. Fertilizer advisory committee.
2-15-1517. Financial assistance program advisory council.
2-15-1518. Director of fire services training school.
2-15-1519. Fire services training advisory council.
2-15-1520. Guaranteed student loan advisory council — terms, compensation.

Part 16 — Department of Professional and Occupational Licensing

2-15-1601. Department of professional and occupational licensing — head.
Sections 2-15-1602 through 2-15-1604 reserved.
2-15-1605. Board of medical examiners.
2-15-1606. Board of dentistry.
2-15-1607. Board of osteopathic physicians.
2-15-1608. Board of podiatry examiners.
2-15-1609. Board of pharmacists.
2-15-1610. Board of nursing.
2-15-1611. Board of nursing home administrators.
2-15-1612. Board of optometrists.
2-15-1613. Board of chiropractors.
2-15-1614. Board of radiologic technologists.
2-15-1615. Board of speech pathologists and audiologists.
2-15-1616. Board of hearing aid dispensers.
2-15-1617. Board of psychologists.
2-15-1618. Board of veterinarians.
2-15-1619. Board of morticians.
Sections 2-15-1620 through 2-15-1624 reserved.
2-15-1625. Board of barbers.
2-15-1626. Board of cosmetologists.
2-15-1627. Board of massage therapists.
2-15-1628. Board of physical therapy examiners.
Sections 2-15-1629 and 2-15-1630 reserved.
2-15-1631. Board of sanitarians.
2-15-1632. Board of water well contractors.
Sections 2-15-1633 through 2-15-1640 reserved.
2-15-1641. Board of public accountants.
2-15-1642. Repealed. Sec. 14, Ch. 497, L. 1979.

2-15-1643. Board of abstracters.
2-15-1644. Board of realty regulation.
Sections 2-15-1645 through 2-15-1650 reserved.
2-15-1651. Board of architects.
2-15-1652. Board of landscape architects.
2-15-1653. Board of professional engineers and land surveyors.
2-15-1654. State electrical board.
2-15-1655. Board of plumbers.
2-15-1656. Board of warm air heating, ventilation, and air conditioning.
Sections 2-15-1657 through 2-15-1660 reserved.
2-15-1661. Board of athletics.
2-15-1662. Board of horseracing.

Part 17 — Department of Labor and Industry

2-15-1701. Department of labor and industry — head.
2-15-1702. Division of workers' compensation — head.
2-15-1703. Division of employment security — head — bureaus.
2-15-1704. Board of labor appeals — allocation — composition — function — quasi-judicial.
2-15-1705. Board of personnel appeals — allocation — composition — quasi-judicial.
2-15-1706. Commission for human rights — allocation — quasi-judicial.

Part 18 — Department of Business Regulation

2-15-1801. Department of business regulation — head.
2-15-1802. Board of milk control — membership — allocation — quasi-judicial.
2-15-1803. State banking board — composition — allocation.
2-15-1804. Proprietary postsecondary educational advisory council.

Part 19 — Insurance and Investment

2-15-1901. Office of securities commissioner.
2-15-1902. Insurance department.
2-15-1903. Commissioner of insurance designated.

Part 20 — Department of Justice

2-15-2001. Department of justice — head.
2-15-2002. Division of motor vehicles.
2-15-2003. Bureau of criminal investigation.
2-15-2004. Division of forensic science — head.
2-15-2005. Fire marshal bureau — advisory council.
2-15-2006. Board of crime control — composition — allocation.
Sections 2-15-2007 through 2-15-2010 reserved.
2-15-2011. Distribution of fire code.

Part 21 — Department of Health and Environmental Sciences

2-15-2101. Department of health and environmental sciences — head.
2-15-2102. Director of health and environmental sciences — qualifications.
2-15-2103. Division of environmental sciences — functions.
2-15-2104. Board of health and environmental sciences — membership — quasi-judicial.
2-15-2105. Board of water and wastewater operators.
2-15-2106. Air pollution control advisory council.
2-15-2107. Water pollution control advisory council.

Part 22 — Department of Social and Rehabilitation Services

2-15-2201. Department of social and rehabilitation services — head.
2-15-2202. Board of veterans' affairs.
2-15-2203. Board of social and rehabilitation appeals — allocation — quasi-judicial.

2-15-2204. Developmental disabilities planning and advisory council.
2-15-2205. Division of visual services.

Part 23 — Department of Institutions

2-15-2301. Department of institutions — head.
2-15-2302. Board of pardons — composition — allocation — quasi-judicial.
2-15-2303. Repealed. Sec. 3, Ch. 495, L. 1979.
2-15-2304. Board of eugenics — composition — qualifications — allocation — quasi-judicial.

Part 24 reserved

Part 25 — Department of Highways

2-15-2501. Department of highways — head.
2-15-2502. Highway commission.

Part 26 — Department of Public Service Regulation

2-15-2601. Department of public service regulation — head.
2-15-2602. Public service commission — composition.

Parts 27 through 29 reserved

Part 30 — Department of Agriculture

2-15-3001. Department of agriculture — head.
2-15-3002. Montana wheat research and marketing committee — composition — allocation.
2-15-3003. Board of hail insurance.

Part 31 — Department of Livestock

2-15-3101. Department of livestock — head.
2-15-3102. Board of livestock — composition.
2-15-3103. Montana pork research and marketing committee.

Part 32 — Department of State Lands

2-15-3201. Department of state lands — head.
2-15-3202. Commissioner of state lands.

Part 33 — Department of Natural Resources and Conservation

2-15-3301. Department of natural resources and conservation — head.
2-15-3302. Board of natural resources and conservation — composition — quasi-judicial.
2-15-3303. Board of oil and gas conservation — composition — allocation — quasi-judicial.
2-15-3304. State coordinator for rangeland resources.
2-15-3305. Rangeland resources committee.
2-15-3306. Soil survey advisory council.

Part 34 — Department of Fish, Wildlife, and Parks

2-15-3401. Department of fish, wildlife, and parks — head.
2-15-3402. Fish and game commission — composition — qualifications — quasi-judicial.
2-15-3403. Montana outfitters' council.

Part 1

Organization

2-15-101. Declaration of policy and purpose. (1) The purpose of this chapter is to comply with Article VI, section 7, of the Montana constitution which requires that all executive and administrative offices, boards, bureaus, commissions, agencies, and instrumentalities of the executive branch (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government.

(2) It is the public policy of this state and the purpose of this chapter to create a structure of the executive branch of state government which is responsive to the needs of the people of this state and sufficiently flexible to meet changing conditions; to strengthen the executive capacity to administer effectively and efficiently at all levels; to encourage greater public participation in state government; to effect the grouping of state agencies into a reasonable number of departments primarily according to function; to provide that the responsibility within the executive branch of state government for the implementation of programs and policies is clearly fixed and ascertainable; and to eliminate overlapping and duplication of effort within the executive branch of state government.

History: En. 82A-102 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 2, Ch. 358, L. 1973; R.C.M. 1947, 82A-102.

2-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Executive branch" means the executive branch of state government referred to in the Montana constitution, Articles III and VI.

(2) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive branch of state government.

(3) "Unit" means an internal subdivision of an agency, created by law or by administrative action, including a division, bureau, section, or department, and an agency allocated to a department for administrative purposes only by this chapter.

(4) "Department" means a principal functional and administrative entity, created by this chapter within the executive branch of state government; is one of the 20 principal departments permitted under the constitution; and includes its units.

(5) "Department head" means a director, commission, board, commissioner, or constitutional officer in charge of a department created by this chapter.

(6) "Director" means a department head specifically referred to as a director in this chapter, and does not mean a commission, board, commissioner, or constitutional officer.

(7) "Advisory capacity" means furnishing advice, gathering information, making recommendations, and performing such other activities as may be

necessary to comply with federal funding requirements and does not mean administering a program or function or setting policy.

(8) "Function" means a duty, power, or program, exercised by or assigned to an agency, whether or not specifically provided for by law.

(9) "Quasi-judicial function" means an adjudicatory function exercised by an agency, involving the exercise of judgment and discretion in making determinations in controversies. The term includes but is not limited to the functions of interpreting, applying, and enforcing existing rules and laws; granting or denying privileges, rights, or benefits; issuing, suspending, or revoking licenses, permits, and certificates; determining rights and interests of adverse parties; evaluating and passing on facts; awarding compensation; fixing prices; ordering action or abatement of action; adopting procedural rules; holding hearings; and any other act necessary to the performance of a quasi-judicial function.

(10) "Quasi-legislative function" generally means making or having the power to make rules or set rates and all other acts connected with or essential to the proper exercise of a quasi-legislative function.

History: En. 82A-103 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 3, Ch. 358, L. 1973; R.C.M. 1947, 82A-103.

2-15-103. Policymaking authority and administrative powers of governor. In accordance with Article VI, section 4, of the Montana constitution, the governor is the chief executive officer of the state. Subject to the constitution and law of this state, the governor shall formulate and administer the policies of the executive branch of state government. In the execution of these policies, the governor has full powers of supervision, approval, direction, and appointment over all departments and their units, other than the office of the lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction, except as otherwise provided by law. Whenever a conflict arises as to the administration of the policies of the executive branch of state government, except for conflicts arising in the office of the lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction, the governor shall resolve the conflict, and the decision of the governor is final.

History: En. 82A-105 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 5, Ch. 358, L. 1973; R.C.M. 1947, 82A-105.

2-15-104. Structure of executive branch. (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:

(a) department of administration;
(b) department of community affairs;
(c) department of military affairs;
(d) department of revenue;
(e) state board of education;
(f) department of professional and occupational licensing;
(g) department of labor and industry;
(h) department of business regulation;
(i) department of justice;

(j) department of health and environmental sciences;
(k) department of social and rehabilitation services;
(l) department of institutions;
(m) department of highways;
(n) department of public service regulation;
(o) department of agriculture;
(p) department of livestock;
(q) department of state lands;
(r) department of natural resources and conservation;
(s) department of fish, wildlife, and parks.

(2) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a division. Each division shall be headed by an administrator.

(b) The principal unit of a division is a bureau. Each bureau shall be headed by a chief.

(c) The principal unit of a bureau is a section. Each section shall be headed by a supervisor.

History: En. 82A-104 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 250, L. 1973; amd. Sec. 4, Ch. 358, L. 1973; amd. Sec. 2, Ch. 51, L. 1974; amd. Sec. 49, Ch. 213, L. 1975; R.C.M. 1947, 82A-104; amd. Sec. 2, Ch. 218, L. 1979.

2-15-105 through 2-15-110 reserved.

2-15-111. Appointment and qualifications of department heads. (1) The governor shall appoint at the beginning of each gubernatorial term each department head who is a director in this chapter.

(2) An appointment of a director by the governor is subject to the confirmation of the senate, except that the governor may appoint a director to assume office before the senate meets in its next regular session to consider the appointment. A director so appointed is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a director, the governor shall make a new appointment.

(3) A director serves at the pleasure of the governor. The governor may remove a director at any time and appoint a new director to the office.

(4) The governor shall select a director on the basis of his professional and administrative knowledge and experience and such additional qualifications as are provided by law.

(5) If a vacancy occurs in the office of a director, the governor shall appoint a new director to serve at the pleasure of the governor.

(6) Heads of departments who are not directors shall be elected or appointed and serve, and their vacancies filled, as provided by law.

History: En. 82A-106 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 6, Ch. 358, L. 1973; R.C.M. 1947, 82A-106.

2-15-112. Duties and powers of department heads. (1) Except as otherwise provided by law, each department head shall:

(a) supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this chapter or other law;

(b) establish the policy to be followed by the department and employees;

(c) compile and submit reports and budgets for the department as required by law or requested by the governor;

(d) provide the governor with any information that he requests at any time on the operation of the department;

(e) represent the department in communications with the governor;

(f) prescribe rules, consistent with law and rules established by the governor, for the administration of the department; the conduct of the employees; the distribution and performance of business; and the custody, use, and preservation of the records, documents, and property pertaining to department business. The lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction may prescribe their own rules for their departments or offices, and the governor may not prescribe rules for them. The rules described in this subsection are limited to statements concerning only the internal management of the agency and not affecting private rights or procedures available to the public. This section does not authorize the adoption of any rule as rules are defined in the Montana Administrative Procedure Act.

(g) subject to the approval of the governor, establish the internal organizational structure of the department and allocate the functions of the department to units to promote the economic and efficient administration and operation of the department. The internal structure of the department shall be established in accordance with 2-15-104(2).

(h) subject to law and the state merit system, if applicable, establish and make appointments to necessary subordinate positions and abolish unnecessary positions;

(i) maintain a central office in Helena for the department and such other facilities throughout the state as may be required for the effective and efficient operation of the department.

(2) Except as otherwise provided by law, each department head may:

(a) subject to law and the state merit system, if applicable, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department;

(b) delegate any of the functions vested in the department head to subordinate employees;

(c) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other source in administering the department's functions;

(d) enter into agreements with federal, state, and local agencies necessary to carry out the department's functions.

History: En. 82A-107 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 7, Ch. 358, L. 1973; amd. Sec. 26, Ch. 285, L. 1977; R.C.M. 1947, 82A-107.

2-15-113. Prior right of department head to agencies and records. Each department head designated by this chapter or appointed by the governor has, before assuming the office of the department head, full access to all agencies and their records within the department created by this chapter for the purpose of formulating plans for internal organization and the fiscal and personnel administration of the department.

History: En. 82A-109 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 358, L. 1973; R.C.M. 1947, 82A-109.

2-15-114 through 2-15-120 reserved.

2-15-121. Allocation for administrative purposes only. (1) An agency allocated to a department for administrative purposes only in this chapter shall:

(a) exercise its quasi-judicial, quasi-legislative, licensing, and policymaking functions independently of the department and without approval or control of the department;

(b) submit its budgetary requests through the department;

(c) submit reports required of it by law or by the governor through the department.

(2) The department to which an agency is allocated for administrative purposes only in this title shall:

(a) direct and supervise the budgeting, record keeping, reporting, and related administrative and clerical functions of the agency;

(b) include the agency's budgetary requests in the departmental budget;

(c) collect all revenues for the agency and deposit them in the proper fund or account. Except as provided in 37-1-101, the department may not use or divert the revenues from the fund or account for purposes other than provided by law.

(d) provide staff for the agency. Unless otherwise indicated in this chapter, the agency may not hire its own personnel.

(e) print and disseminate for the agency any required notices, rules, or orders adopted, amended, or repealed by the agency.

(3) The department head of a department to which any agency is allocated for administrative purposes only in this chapter shall:

(a) represent the agency in communications with the governor;

(b) allocate office space to the agency as necessary, subject to the approval of the department of administration.

History: En. 82A-108 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 8, Ch. 358, L. 1973; R.C.M. 1947, 82A-108.

2-15-122. Creation of advisory councils. (1) (a) A department head or the governor may create advisory councils.

(b) An agency or an official of the executive branch of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, may also create advisory councils but only if federal law or regulation requires that such official or agency create the advisory council as a condition to the receipt of federal funds.

(c) The board of public education, the board of regents of higher education, the state board of education, the attorney general, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. They must file a record of each council created by them in the office of the governor and the office of the secretary of state in accordance with subsection (9) of this section.

(2) Each advisory council created under this section shall be known as the ".... advisory council".

(3) The creating authority shall prescribe the composition and advisory functions of each advisory council created; appoint its members, who shall

serve at the pleasure of the governor; and specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity as defined in 2-15-102(7).

(5) Unless he is a full-time salaried officer or employee of this state or of any political subdivision of this state, each member is entitled to be paid in an amount to be determined by the department head, not to exceed $25 for each day in which he is actually and necessarily engaged in the performance of council duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of council duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year each advisory council shall elect a chairman and such other officers as it considers necessary.

(7) Unless otherwise specified by the creating authority, each advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor and may meet at other times on the call of the chairman or a majority of its members. An advisory council may not meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (1)(c) of this section, an advisory council may not be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor must file in his office and in the office of the secretary of state a record of the council created showing the council's:

(a) name, in accordance with subsection (2) of this section;

(b) composition;

(c) names and addresses of the appointed members;

(d) purpose;

(e) term of existence, in accordance with subsection (10) of this section.

(10) An advisory council may not be created to remain in existence longer than 2 years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by the governor or by the board of public education, the board of regents of higher education, the state board of education, the attorney general, or the superintendent of public instruction for those advisory councils created in the manner set forth in subsection (1)(c) of this section. If the existence of an advisory council is extended, they shall specify a new date, not more than 2 years later, when the existence of the advisory council ends and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary.

History: En. 82A-110 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 358, L. 1973; amd. Sec. 3, Ch. 51, L. 1974; amd. Sec. 56, Ch. 439, L. 1975; R.C.M. 1947, 82A-110.

2-15-123. Administratively created agencies — prohibition. The governor, a department head, or any other official of the executive branch of state government or an agency may not, by administrative action, create or attempt to create an agency of state government. This section does not apply to:

(1) advisory councils created in accordance with 2-15-122;

(2) units within the internal structure of a department established under 2-15-112(1)(g).

History: En. 82A-111 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 358, L. 1973; R.C.M. 1947, 82A-111.

2-15-124. Quasi-judicial boards. If an agency is designated by law as a quasi-judicial board for the purposes of this section, the following requirements apply:

(1) The number of and qualifications of its members are as prescribed by law. In addition to those qualifications, unless otherwise provided by law, at least one member shall be an attorney licensed to practice law in this state.

(2) The governor shall appoint the members. A majority of the members shall be appointed to serve for terms concurrent with the gubernatorial term and until their successors are appointed and qualified. The remaining members shall be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term and until their successors are appointed and qualified. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of his term and the remaining members in the middle of his term. As used in this subsection, "majority" means the next whole number greater than half.

(3) The appointment of each member is subject to the confirmation of the senate. However, the governor may appoint a member to assume office before the senate meets at its next regular session to consider the appointment. A member so appointed has all the powers of the office upon assuming that office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy shall be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which he is appointed.

(5) The governor shall designate the chairman. The chairman may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless he is a full-time salaried officer or employee of this state or of a political subdivision of this state, each member is entitled to be paid $25 for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of all members of a board is required to adopt any resolution, motion, or other decision, unless otherwise provided by law.

History: En. 82A-112 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 12, Ch. 358, L. 1973; amd. Sec. 57, Ch. 439, L. 1975; amd. Sec. 1, Ch. 186, L. 1977; R.C.M. 1947, 82A-112(1), (2)(a), (3) thru (8).

2-15-125. Future agencies and functions. If an agency or a function is not allocated or transferred to a department or a constitutional office by this chapter or any other act of the legislature, the governor shall, by executive order, allocate that agency for administrative purposes only or function to the appropriate principal department or constitutional office. The governor shall transmit copies of all executive orders issued under this section to the legislature at its next regular session.

History: En. 82A-115 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 13, Ch. 358, L. 1973; R.C.M. 1947, 82A-115.

2-15-126 through 2-15-130 reserved.

2-15-131. Rights of state personnel. Unless otherwise provided in this chapter, each state officer or employee affected by the reorganization of the executive branch of state government under this chapter is entitled to all rights which he possessed as a state officer or employee before the effective date of the applicable part of this chapter, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy. This section is not intended to create any new rights for any state officer or employee but to continue only those rights in effect before the effective date of the applicable part of this chapter or an amendment to this chapter.

History: En. 82A-116 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 358, L. 1973; R.C.M. 1947, 82A-116.

2-15-132. Rights to property. The department or unit thereof that succeeds to all or part of the functions of an agency under this chapter also succeeds to the rights to all real and personal property of that agency relating to the functions or parts of functions transferred. The property includes real property, records, office equipment, supplies, contracts, books, papers, documents, maps, appropriations, accounts within and without the state treasury, funds, vehicles, and all other similar property. However, the department or unit may not use or divert moneys in a fund or account for a purpose other than provided by law. The governor shall resolve any conflict as to the proper disposition of the property, and his decision is final. This section does not apply to property owned by the federal government.

History: En. 82A-117 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 15, Ch. 358, L. 1973; R.C.M. 1947, 82A-117.

2-15-133. Rules and orders. The department or unit thereof that succeeds to all or part of the functions of an agency under this chapter also succeeds to the rules and orders of that agency relating to the functions or parts of functions transferred. The rules and orders of any agency in effect before the effective date of the transfer remain in effect until amended, repealed, superseded, or nullified by proper authority or by law.

History: En. 82A-118 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 16, Ch. 358, L. 1973; R.C.M. 1947, 82A-118.

2-15-134. Legal proceedings. The transfer or abolition of an agency or function under this chapter does not affect the validity of any judicial or administrative proceeding pending or which could have been commenced before the effective date of the transfer or abolition, and the department or unit which succeeds to the functions of an agency relating to the proceeding shall be substituted as a party in interest.

History: En. 82A-119 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 17, Ch. 358, L. 1973; R.C.M. 1947, 82A-119.

2-15-135. Rights and duties under existing transactions. The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the effective date of the transfer of functions under this chapter, by the state or by any agency, officer, or employee thereof, and covenants and agreements as set forth therein remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the transfer of the functions of an agency or the abolition of an agency under this chapter. The department or unit which succeeds to the functions of an agency is substituted for that agency and succeeds to its rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions.

History: En. 82A-120 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 18, Ch. 358, L. 1973; R.C.M. 1947, 82A-120.

2-15-136. References. Unless inconsistent with this chapter, if an agency is abolished under this chapter or if a function of an agency is transferred to another agency, references to the abolished agency or to the agency whose functions were transferred in any law, contract, or other document shall apply to the agency which succeeds to the functions which were transferred.

History: En. 82A-121 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 19, Ch. 358, L. 1973; R.C.M. 1947, 82A-121.

2-15-137. Federal aid. If any part of this chapter is ruled to be in conflict with federal requirements which are a prescribed condition to the receipt of federal aid by the state, an agency, or a political subdivision, that part of this chapter has no effect and the governor may issue an executive order which substitutes for that part to the extent necessary to effectuate the receipt of federal aid. The order is effective until the legislature again acts upon the matter.

History: En. 82A-122 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 20, Ch. 358, L. 1973; R.C.M. 1947, 82A-122.

Part 2

Governor

2-15-201. Powers and duties of governor. In addition to the duties prescribed by the constitution, the governor shall perform the following duties:

(1) He shall supervise the official conduct of all executive and ministerial officers.

(2) He shall see that all offices are filled and the duties thereof performed or, in default thereof, apply such remedy as the law allows. If the remedy is imperfect, he shall acquaint the legislature therewith at its next session.

(3) He shall make the appointments and supply the vacancies as required by law.

(4) He is the sole official organ of communication between the government of this state and the government of any other state or of the United States.

(5) Whenever any suit or legal proceeding is pending against this state or which may affect the title of this state to any property or which may result in any claim against the state, he may direct the attorney general to appear on behalf of the state and may employ such additional counsel as he may judge expedient.

(6) He may require the attorney general or county attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

(7) He may require the attorney general to aid the county attorney in the discharge of his duties.

(8) He may offer rewards not exceeding $1,000 each, payable out of the general fund, for the apprehension of any convict who has escaped from the state prison or any person who has committed or is charged with an offense punishable by death.

(9) He shall perform such duties respecting fugitives from justice as are prescribed by Title 46, chapter 30.

(10) He shall issue and transmit election proclamations, as prescribed by [13-11-101].

(11) He shall issue land warrants and patents, as prescribed in 77-2-342.

(12) He shall prepare a biennial report pursuant to 2-7-102.

(13) He may require any officer or board to make special reports to him, upon demand, in writing.

(14) He shall discharge the duties of member of the board of examiners, of nonvoting ex officio member of the state board of education, and of member of the board of land commissioners.

(15) He has the other powers and must perform the other duties as are devolved upon him by this code or any other law of this state.

History: En. Sec. 370, Pol. C. 1895; re-en. Sec. 145, Rev. C. 1907; re-en. Sec. 124, R.C.M. 1921; Cal. Pol. C. Sec. 380; re-en. Sec. 124, R.C.M. 1935; amd. Sec. 94, Ch. 199, L. 1965; R.C.M. 1947, 82-1301; amd. Sec. 10, Ch. 184, L. 1979.

Compiler's Comments

Commissioner correction. The bracketed references were repealed, either in part or in whole, by Sec. 407, Ch. 571, L. 1979. The brackets were added by the Code Commissioner, 1979. This section requires an amendment to provide proper referencing.

2-15-202. Repealed. Sec. 32, Ch. 184, L. 1979.

2-15-203 through 2-15-210 reserved.

2-15-211. Mental disabilities board of visitors — composition — allocation. (1) The governor shall appoint a mental disabilities board of visitors.

(2) The board shall consist of five persons representing but not limited to consumers, doctors of medicine, and the behavioral sciences, at least three of whom may not be professional persons and at least one of whom shall be a representative of an organization concerned with the care and welfare of the mentally ill and one representative of an organization concerned with the care and welfare of the mentally retarded or developmentally disabled. No one may be a member of the board who is a full-time agent or employee of the department of institutions or a mental health facility affected by Title 53, chapter 20, part 1, and chapter 21, part 1, except this prohibition does not affect any employee of a state college or university.

(3) The mental disabilities board of visitors shall be attached to the governor for administrative purposes. It may employ staff for the purpose of carrying out its duties as set out in Title 53, chapter 20, part 1, and chapter 21, part 1.

History: Ap. p. Sec. 30, Ch. 466, L. 1975; amd. Sec. 16, Ch. 546, L. 1977; Sec. 38-1330, R.C.M. 1947; Ap. p. Sec. 32, Ch. 468, L. 1975; amd. Sec. 18, Ch. 546, L. 1977; Sec. 38-1232, R.C.M. 1947; R.C.M. 1947, 38-1232(part), 38-1330(part).

2-15-212. Reserved water rights compact commission. (1) There is created a reserved water rights compact commission.

(2) Commissioners are appointed within 30 days of May 11, 1979, as follows:

(a) two members of the house of representatives appointed by the speaker, each from a different political party;

(b) two members of the senate appointed by the president, each from a different political party;

(c) four members designated by the governor; and

(d) one member designated by the attorney general.

(3) Legislative members of the commission are entitled to receive compensation and expenses as provided in 5-2-301 for each day actually spent on commission business. Other members are entitled to salary and expenses as state employees.

(4) The commission is attached to the governor's office for administrative purposes only. The costs of the commission shall be paid from funds appropriated for that purpose from the water right adjudication account established in 85-2-241.

(5) Members appointed to the commission shall serve until the work of the commission is completed or until they resign or are otherwise unable to serve. A vacancy must be filled in the manner of the original appointment.

History: En. Sec. 27, Ch. 697, L. 1979.

Compiler's Comments

Commissioner correction. An erroneous reference to sec. 19, Ch. 697, L. 1979, was corrected to "85-2-241" (section 18, Ch. 697, L. 1979) by the Code Commissioner, 1979.

2-15-213 through 2-15-220 reserved.

2-15-221. Governor-elect — staff and services provided. (1) As used in this section, unless the context clearly indicates otherwise, "governor-elect" means the person elected at a general election to the office of governor who is not the incumbent governor.

(2) The department of administration shall provide the governor-elect and his necessary staff with suitable office space in the capitol building, together with furnishings, supplies, equipment, and telephone service for the period between the general election and the inauguration.

(3) The governor-elect may obtain the assistance of persons of his own choosing, between the general election and inauguration, and they shall receive reasonable compensation for their services. These persons shall be state employees, but they shall not be subject to any civil service or personnel laws or rules of the state.

(4) In addition, the governor-elect may request that the department of administration assign one or more employees of the department of administration to assist the governor-elect and his staff in the study and interpretation of information. Employees of the department of administration shall be assigned for the time necessary between the general election and the inauguration.

(5) The funds necessary to carry out the provisions of this section shall be included in the appropriation request of the department of administration to the legislature meeting in regular session immediately prior to a general election when a governor will be chosen.

History: **(1)En. Sec. 1, Ch. 47, L. 1969; Sec. 82-1311, R.C.M. 1947; (2) thru (5)En. Secs. 2, 3, 4, Ch. 47, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; Secs. 82-1312, 82-1313, 82-1314, R.C.M. 1947; R.C.M. 1947, 82-1311, 82-1312, 82-1313, 82-1314.**

Part 3

Lieutenant Governor

2-15-301. Office of lieutenant governor. There is created an office of lieutenant governor.

History: **En. Sec. 1, Ch. 297, L. 1973; R.C.M. 1947, 82-1702.1.**

2-15-302. Powers and duties of lieutenant governor. (1) The lieutenant governor may:

(a) prescribe rules for the administration of the office;

(b) hire personnel for the office and establish policy to be followed by such personnel; and

(c) compile and submit a budget for the office.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor.

History: **En. Secs. 2, 3, Ch. 297, L. 1973; R.C.M. 1947, 82-1702.2, 82-1702.3.**

2-15-303. Repealed. Sec. 1, Ch. 66, L. 1979.

Part 4

Secretary of State

2-15-401. *(Temporary)* **Duties of secretary of state.** In addition to the duties prescribed by the constitution, it is the duty of the secretary of state to:

(1) attend at every session of the legislature for the purpose of receiving bills and resolutions and to perform such other duties as may be devolved upon him by resolution of the two houses or either of them;

(2) keep a register of and attest the official acts of the governor, including all appointments made by him, with date of commission and names of appointees and predecessors;

(3) affix the great seal, with his attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

(4) record in proper books all conveyances made to the state and all articles of incorporation filed in his office;

(5) take and file in his office receipts for all books distributed by him and direct the county clerk of each county to do the same;

(6) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

(7) furnish, on demand, to any person paying the fees, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in his office;

(8) keep a fee book in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein;

(9) file in his office descriptions of seals in use by the different state officers;

(10) discharge the duties of member of the board of examiners and of the board of land commissioners and all other duties required of him by law;

(11) report to the governor as prescribed in 2-7-102;

(12) receive, designate, and record trademarks as provided in 30-13-103;

(13) distribute the bound volumes of the decisions of the supreme court in the manner provided by 3-2-604;

(14) report annually to the legislative council all changes of names received pursuant to 27-31-205 for publication in the Laws of Montana;

(15) report annually to the legislative council all watercourse name changes received pursuant to 85-2-134 for publication in the Laws of Montana;

(16) keep a register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application.

2-15-401. *(Effective July 1, 1980)* **Duties of secretary of state.** In addition to the duties prescribed by the constitution, it is the duty of the secretary of state to:

(1) attend at every session of the legislature for the purpose of receiving bills and resolutions and to perform such other duties as may be devolved upon him by resolution of the two houses or either of them;

(2) keep a register of and attest the official acts of the governor, including all appointments made by him, with date of commission and names of appointees and predecessors;

(3) affix the great seal, with his attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

(4) record in proper books all conveyances made to the state and all articles of incorporation filed in his office;

(5) take and file in his office receipts for all books distributed by him and direct the county clerk of each county to do the same;

(6) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

(7) furnish, on demand, to any person paying the fees therefor, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in his office;

(8) keep a fee book in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein;

(9) file in his office descriptions of seals in use by the different state officers;

(10) discharge the duties of member of the board of examiners and of the board of land commissioners and all other duties required of him by law;

(11) report to the governor as prescribed in 2-7-102;

(12) register marks as provided in Title 30, chapter 13, part 3;

(13) distribute the bound volumes of the decisions of the supreme court in the manner provided by 3-2-604;

(14) report annually to the legislative council all changes of names received pursuant to 27-31-205 for publication in the Laws of Montana;

(15) report annually to the legislative council all watercourse name changes received pursuant to 85-2-134 for publication in the Laws of Montana;

(16) keep a register of all application for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application.

History: En. Sec. 401, Pol. C. 1895; re-en. Sec. 154, Rev. C. 1907; re-en. Sec. 134, R.C.M. 1921; Cal. Pol. C. Sec. 408; re-en. Sec. 134, R.C.M. 1935; amd. Sec. 95, Ch. 199, L. 1965; amd. Sec. 1, Ch. 96, L. 1973; R.C.M. 1947, 82-2202; amd. Sec. 2, Ch. 159, L. 1979; amd. Sec. 11, Ch. 184, L. 1979; amd. Sec. 19, Ch. 429, L. 1979.

2-15-402. Deputy secretary of state. (1) The secretary of state shall appoint a chief deputy and a deputy who in the absence of the principal shall perform all the duties of office. In the case of a vacancy in the office of secretary of state, the chief deputy shall perform all the duties of the office until such disability be removed or vacancy filled.

(2) Such deputies shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of their duties.

History: En. Sec. 1, Ch. 86, L. 1903; re-en. Sec. 143, Rev. C. 1907; re-en. Sec. 122, R.C.M. 1921; re-en. Sec. 122, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1947; amd. Sec. 1, Ch. 8, L. 1949; amd. Sec. 48, Ch. 177, L. 1965; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 82-601(part).

2-15-403 through 2-15-410 reserved.

2-15-411. Commissioner of campaign finances and practices. (1) There is a commissioner of campaign finances and practices who is appointed as provided in 13-37-102.

(2) The office of the commissioner is attached to the office of the secretary of state for administrative purposes only, as specified in 2-15-121, except that the provisions of subsections (1)(b), (1)(c), (2)(a), (2)(b), (2)(d), (2)(e), and (3)(a) of 2-15-121 do not apply.

History: En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(part).

2-15-412. Board of state canvassers. The board of state canvassers created in 13-15-502 is allocated to the office of the secretary of state for administrative purposes only as prescribed in 2-15-121.

History: En. 82A-2102 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-2102; amd. Sec. 12, Ch. 184, L. 1979.

2-15-413. Repealed. Sec. 407, Ch. 571, L. 1979.

Part 5

Attorney General

2-15-501. General duties. It is the duty of the attorney general:

(1) to attend the supreme court and prosecute or defend all causes to which the state or any officer thereof in his official capacity is a party and all causes to which any county may be a party unless the interest of the county is adverse to the state or some officer thereof acting in his official capacity;

(2) after judgment in any of the causes referred to in the preceding subsection, to direct the issuing of such process as may be necessary to carry the same into execution;

(3) to account for and pay over to the proper officer all moneys which may come into his possession belonging to the state or to any county;

(4) to keep a register of all cases in which he is required to appear, which must during business hours be open to the inspection of the public. The register must show the county, district, and court in which the cases have been instituted and tried and whether they are civil or criminal. If civil, the register must show the nature of the demand, the stage of proceedings and, when prosecuted to judgment, a memorandum of the judgment, of any process issued thereon, and whether satisfied or not. If not satisfied, the register must show the return of the sheriff. If criminal, the register must show the nature of the crime, the mode of prosecution, the stage of proceedings and, when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reason of the delay or prevention. The attorney general must deliver the same to his successor in office.

(5) to exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices and from time to time require of them reports as to the condition of public business entrusted to their charge. The supervisory powers granted to the attorney general by this subsection

include the power to order and direct county attorneys in all matters pertaining to the duties of their office. The county attorney must, when ordered or directed by the attorney general, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding.

(6) when required by the public service or directed by the governor, to assist the county attorney of any county in the discharge of his duties;

(7) to give his opinion in writing, without fee, to the legislature or either house thereof, to any state officer, board, or commission, to any county attorney, to the city attorney of any city or town, and to the board of county commissioners of any county of the state when required upon any question of law relating to their respective offices. He shall give any such opinion within 3 months following the date it is requested unless he certifies in writing to the requesting party that the question is of sufficient complexity to require additional time. If an opinion issued by the attorney general conflicts with an opinion issued by a city attorney, county attorney, or an attorney employed or retained by any state officer, board, commission, or department, the attorney general's opinion shall be controlling unless overruled by a state district court or the supreme court.

(8) to bid upon and purchase in the name of the state and under the direction of the board of investments any property offered for sale under execution issued upon judgments in favor of or for the use of the state and to enter satisfaction, in whole or in part, of such judgments as the consideration for such purchases;

(9) whenever the property of a judgment debtor in any judgment mentioned in the preceding subsection has been sold under a prior judgment or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, under the direction of the board of investments, to redeem such property from such prior judgment, lien, or encumbrance. All sums of money necessary for such redemption must be paid out of any money appropriated for such purposes.

(10) when in his opinion it is necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the state, such suits or other proceedings as are necessary to set aside and annul all conveyances fraudulently made by such judgment debtors, the cost necessary to the prosecution must be paid out of any appropriations for the prosecution of delinquents;

(11) to discharge the duties of a member of the board of examiners and state board of land commissioners and other duties prescribed by law;

(12) to report to the governor, at the time prescribed by 2-7-102, the condition of the affairs of his department, and to accompany the same with a copy of his docket and of the reports received by him from county attorneys;

(13) to prescribe the form of blanks to be used by the clerks of the district courts in issuing commitments to the several state institutions, admission to which requires a court commitment.

History: (1) thru (12)Ap. p. Sec. 460, Pol. C. 1895; re-en. Sec. 193, Rev. C. 1907; re-en. Sec. 199, R.C.M. 1921; Cal. Pol. C. Sec. 470; re-en. Sec. 199, R.C.M. 1935; amd. Sec. 89, Ch. 199, L. 1965; amd. Sec. 13, Ch. 344, L. 1973; amd. Sec. 1, Ch. 257, L. 1975; amd. Sec. 1, Ch. 118, L. 1977; amd. Sec. 12, Ch. 343, L. 1977; Sec. 82-401, R.C.M. 1947; Ap. p. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; Sec.

16-3101, R.C.M. 1947; (13)En. Sec. 1, Ch. 158, L. 1925; re-en. Sec. 199.1, R.C.M. 1935; Sec. 82-402, R.C.M. 1947; R.C.M. 1947, 16-3101(part), 82-401, 82-402.

2-15-502. Qualification of assistants. Each assistant attorney general must be duly licensed to practice law in the state of Montana at the time of his appointment.

History: En. Sec. 2, p. 96, L. 1901; en. Sec. 2, Ch. 13, L. 1907; Sec. 197, Rev. C. 1907; re-en. Sec. 203, R.C.M. 1921; re-en. Sec. 203, R.C.M. 1935; R.C.M. 1947, 82-406.

Part 6

State Auditor

2-15-601. State auditor. There is a state auditor as provided in Article VI, section 1, of the Montana constitution.

History: En. by Code Commissioner, 1979.

2-15-602. Deputy state auditor. (1) The state auditor shall appoint a deputy who in the absence of the principal or in the case of vacancy in his office shall perform all the duties of office until such disability be removed or vacancy be filled.

(2) Such deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of his duties.

History: En. Sec. 1, Ch. 86, L. 1903; re-en. Sec. 143, Rev. C. 1907; re-en. Sec. 122, R.C.M. 1921; re-en. Sec. 122, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1947; amd. Sec. 1, Ch. 8, L. 1949; amd. Sec. 48, Ch. 177, L. 1965; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 82-601(part).

Part 7

Superintendent of Public Instruction

2-15-701. Superintendent of public instruction. There is a superintendent of public instruction as provided in Article VI, section 1, of the Montana constitution. The election, qualifications, and term of office of the superintendent are provided for in Title 20, chapter 3.

History: En. by Code Commissioner, 1979.

Parts 8 and 9 reserved

Part 10

Department of Administration

2-15-1001. Department of administration — head. There is created a department of administration. The department head is a director of administration appointed by the governor in accordance with 2-15-111.

History: En. 82A-201 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-201.

2-15-1002. Ex officio state treasurer. The director of the department of administration shall serve as ex officio state treasurer.

History: En. Sec. 1, Ch. 136, L. 1973; amd. Sec. 1, Ch. 468, L. 1977; R.C.M. 1947, 82A-214.

2-15-1003 and 2-15-1004 reserved.

2-15-1005. Board of investments — allocation — composition — quasi-judicial. (1) There is a board of investments.

(2) Except as otherwise provided in this subsection, the board is allocated to the department for administrative purposes only as prescribed in 2-15-121. Personnel for the board shall be appointed by the department subject to the approval of the board, except that the board may employ an investment officer and assistant investment officer who will have general responsibility for management of the board's staff and directing investment activity. The investment officer and assistant investment officer serve at the pleasure of the board, and the board may prescribe the duties and annual salary of both.

(3) The board is composed of five members, appointed by the governor as prescribed in 2-15-124, informed and experienced in the subject of investments.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124.

History: En. 82A-204 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 90, Ch. 326, L. 1974; R.C.M. 1947, 82A-204(1) thru (3), (5); amd. Sec. 1, Ch. 365, L. 1979.

2-15-1006. Merit system council — allocation — composition. (1) There is a merit system council.

(2) The council is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the council may hire its own personnel, and 2-15-121(2)(d) does not apply.

(3) The council is composed of three members appointed by the governor for 6-year overlapping terms. The governor shall appoint the members upon the recommendation of the agencies which participate in the joint merit system and in accordance with federal requirements.

(4) Members shall be compensated and reimbursed as are members of advisory councils in 2-15-122(5).

History: En. 82A-206 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 91, Ch. 326, L. 1974; R.C.M. 1947, 82A-206.

2-15-1007. Board of examiners — allocation. (1) The governor, secretary of state, and attorney general constitute a board of examiners.

(2) The meetings of the board are held at the seat of government on the third Monday in each month and such other times as the president may call it together.

(3) The governor is the president and the secretary of state is the secretary of said board, and in the absence of either, an officer pro tempore may be elected from their number.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1)En. Sec. 232 to 253 were enacted as Sections 1 to 21, pp. 183 to 187, L. 1891; re-en. Secs. 680 to 701, Pol. C. 1895; appearing as Secs. 226 to 247, Rev. C. 1907; re-en. Sec. 232, R.C.M. 1921; Cal. Pol. C. Secs. 654-685; re-en. Sec. 232, R.C.M. 1935; amd. Sec. 7, Ch. 97, L. 1961; Sec. 82-1101, R.C.M. 1947; (2), (3)En. Sec. 227, Rev. C. 1907; re-en. Sec. 233, R.C.M. 1921; re-en. Sec. 233, R.C.M. 1935; Sec. 82-1102, R.C.M. 1947; (4)En. 82A-207 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 92, Ch. 326, L. 1974; amd. Sec. 14, Ch. 343, L. 1977; Sec. 82A-207, R.C.M. 1947; R.C.M. 1947, 82-1101(part), 82-1102, 82A-207.

2-15-1008. Board of housing — allocation — composition — quasi-judicial. (1) There is a board of housing.

(2) The board consists of seven members appointed by the governor as provided in 2-15-124. The members shall be informed and experienced in housing, economics, or finance.

(3) The board shall elect a chairman and other necessary officers.

(4) The board is designated a quasi-judicial board for purposes of 2-15-124.

(5) The board is allocated to the department of administration for administrative purposes only as provided in 2-15-121.

(6) In compliance with the state pay plan, the department shall provide all staff and services to the board as are determined by the board in conjunction with the department to be necessary for the purposes of carrying out the board's programs. The department shall assess the board for reasonable costs.

(7) A member of the board shall not be deemed to have a conflict of interest under the provisions of 2-2-201 merely because the member is a stockholder, officer, or employee of a lending institution who may participate in the board's programs.

History: En. 82A-224 by Sec. 2, Ch. 163, L. 1977; R.C.M. 1947, 82A-224; amd. Sec. 3, Ch. 143, L. 1979.

Compiler's Comments

Effective date. Sec. 5, Ch. 143, L. 1979, provided: "This act is effective on passage and approval." Approved March 20, 1979.

2-15-1009. Public employees' retirement board — terms — allocation. (1) There is a public employees' retirement board.

(2) The board consists of five members appointed by the governor. The members are:

(a) three public employees who are members of a public retirement system (not more than one of these members may be an employee of the same department); and

(b) two members at large.

(3) The term of office for each member is 5 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(5) Members of the board shall be paid their travel expenses as provided for in 2-18-501 through 2-18-503, as amended, and members of the board who are not members of the public retirement system shall be entitled, in addition to travel expenses, to compensation as established for a quasi-judicial board in 2-15-124.

History: En. 82A-210 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 190, L. 1974; amd. Sec. 94, Ch. 326, L. 1974; amd. Sec. 3, Ch. 132, L. 1977; amd. Sec. 22, Ch. 453, L. 1977; R.C.M. 1947, 82A-210.

2-15-1010. Teachers' retirement board — terms — allocation. (1) There is a teachers' retirement board.

(2) The board consists of six members appointed by the governor, as follows:

(a) the superintendent of public instruction;

(b) two persons appointed from the teaching profession who are members of the retirement system;

(c) two persons appointed as representatives of the public;

(d) one member who shall be a retired teacher who was a member of the retirement system at the time of retirement.

(3) Each appointed member of the board shall serve a term of 4 years. Each appointed member shall take and subscribe to the oath prescribed by section 3 of Article III of the constitution of the state. The oath shall be filed in the office of the secretary of state.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

History: En. 82A-212 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 95, Ch. 326, L. 1974; amd. Sec. 1, Ch. 45, L. 1977; R.C.M. 1947, 82A-212.

2-15-1011. State agency for surplus property. There is hereby created and established a Montana state agency for surplus property which shall be administered by the department of administration. The director of the department may prescribe the duties of such personnel as are needed to carry out the duties of Title 18, chapter 5, part 2.

History: En. Sec. 1, Ch. 136, L. 1953; amd. Sec. 1, Ch. 478, L. 1977; R.C.M. 1947, 82-3101.

2-15-1012. Repealed. Sec. 14, Ch. 555, L. 1979.

2-15-1013. Records committee — composition and meetings. (1) There is a committee to be known as the state records committee composed of representatives of:

(a) the department of administration;

(b) the legislative auditor;

(c) the attorney general; and

(d) the Montana historical society.

(2) The representatives are to be designated by the head of the respective agencies, and their appointments shall be submitted in writing to the director of the department of administration.

(3) The committee shall meet at least quarterly.

(4) Committee members shall serve without additional salary but are entitled to reimbursement for travel expense incurred while engaged in committee activities as provided for in 2-18-501 through 2-18-503. Such expenses shall be paid from the appropriations made for operation of their respective agencies.

History: En. 82-3338, by Sec. 7, Ch. 339, L. 1977; R.C.M. 1947, 82-3338(1), (2), (4).

2-15-1014. Office of workers' compensation judge — allocation — appointment — salary. (1) There is the office of workers' compensation judge. The office is allocated to the department of administration for administrative purposes only as prescribed in 2-15-121.

(2) The governor shall appoint the workers' compensation judge for a term of 6 years in the same manner provided by Title 3, chapter 1, part 10, for the appointment of supreme or district court judges. A vacancy shall be filled in the same manner as the original appointment.

(3) To be eligible for workers' compensation judge, a person must:

(a) have the qualifications necessary for district court judges found in Article VII, section 9, of the Montana constitution;

(b) devote full time to the duties of workers' compensation judge and not engage in the private practice of law.

(4) The workers' compensation judge is entitled to the same salary and other emoluments as that of a district judge but shall be accorded retirement benefits under the public employees' retirement system.

History: En. 82A-1016 by Sec. 1, Ch. 537, L. 1975; R.C.M. 1947, 82A-1016.

2-15-1015. State tax appeal board. There is a state tax appeal board as provided in Title 15, chapter 2.

History: En. by Code Commissioner, 1979.

2-15-1016. State employee group benefits advisory council — composition. (1) The department shall create a state employee group benefits advisory council under 2-15-122.

(2) The members of the advisory council shall be selected from a diverse group in order to adequately represent the interests of state employees.

History: En. Sec. 3, Ch. 555, L. 1979.

Compiler's Comments

Codification. Sec. 13, Ch. 555, L. 1979, provided in part: "Section 3 of this act is intended to be codified in Title 2, chapter 15, part 10."

Effective date. Sec. 15, Ch. 555, L. 1979, provided: "This act shall be effective immediately on passage and approval." Approved April 12, 1979.

2-15-1017. Publishing policy committee. (1) There is a publishing policy committee.

(2) The committee consists of the budget director, the director of administration, and a director of a state department designated by the governor.

History: En. Sec. 3, Ch. 646, L. 1979.

Part 11

Department of Community Affairs

2-15-1101. Department of community affairs — head. There is a department of community affairs. The department head is a director of community affairs appointed by the governor in accordance with 2-15-111.

History: En. 82A-901 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 213, L. 1975; R.C.M. 1947, 82A-901.

2-15-1102. Board of county printing — composition — allocation — compensation. (1) There is a board of county printing.

(2) The board consists of five members appointed by the governor for terms of 2 years.

(3) The members are:

(a) two members of the printing industry;

(b) two county commissioners;

(c) one member of the general public.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(5) The members of the board shall be compensated and reimbursed as are members of advisory councils in 2-15-122.

History: (1) thru (4)En. 82A-904 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 103, Ch. 348, L. 1974; Sec. 82A-904, R.C.M. 1947; (5)En. Sec. 4, Ch. 280, L. 1967; amd. Sec. 59, Ch. 348, L. 1974; Sec. 16-1228, R.C.M. 1947; R.C.M. 1947, 16-1228, 82A-904.

Compiler's Comments

Board reestablished. Sec. 1, Ch. 364, L. 1979, provided: "The board of county printing is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules."

Effective date. Sec. 4, Ch. 364, L. 1979, provided: "This act is effective on passage and approval." Approved March 28, 1979.

Statement of intent. The statement of intent adopted with House Bill 881 (Ch. 364, L. 1979) provided: "A statement of intent is required for HB 881 in that it continues rulemaking authority for the Board of County Printing in Section 1.

1. Section 1 continues the rulemaking authority of the Board of County Printing. It is the intent of the Legislature that the Board of County Printing continue to resolve differences between County Commissioners and individuals performing county printing by establishing maximum prices for such printing. All rules promulgated by the Board of County Printing shall be subject to the Montana Administrative Procedure Act."

2-15-1103. Board of aeronautics — qualification — allocation — quasi-judicial. (1) There is a board of aeronautics.

(2) The board consists of seven members. The members are:

(a) one member of the Montana pilots' association;

(b) one member of the Montana chamber of commerce;

(c) one member of the municipal league;

(d) one member of the county commissioners association;

(e) one person actively engaged in aviation education in this state;

(f) one person representative of interstate commercial airline operators, who must at the time of appointment be an employee or official of an interstate commercial airline operator and a resident of this state;

(g) one person who must at the time of appointment be an active base operator in this state, or an official of a base operator in this state, of flying services or flying schools.

(3) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

History: En. 82A-905 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 104, Ch. 348, L. 1974; R.C.M. 1947, 82A-905.

2-15-1104. Coal board — allocation — composition. (1) There is a coal board composed of seven members.

(2) The coal board is allocated to the department of community affairs for administrative purposes only as prescribed in 2-15-121.

(3) The governor shall appoint a seven-member coal board, as provided under 2-15-124.

(4) (a) The members of the coal board are selected as follows:

(i) two from the impact areas; and

(ii) two with expertise in education.

(b) The governor shall further, in making these appointments, consider people from these fields:

(i) business;

(ii) engineering;

(iii) public administration; and

(iv) planning.

(5) No more than four members may be residents of the same congressional district.

History: En. 50-1704 by Sec. 5, Ch. 502, L. 1975; amd. Sec. 6, Ch. 540, L. 1977; R.C.M. 1947, 50-1804.

2-15-1105 through 2-15-1110 reserved.

2-15-1111. Office of state coordinator of Indian affairs. (1) There is an office of state coordinator of Indian affairs. The office is allocated to the department of community affairs for administrative purposes only as prescribed in 2-15-121.

(2) The coordinator shall be appointed by the governor from a list of five qualified Indian applicants agreed upon by the tribal councils of the respective Indian tribes of the state and shall serve at the pleasure of the governor.

History: En. Sec. 2, Ch. 203, L. 1951; amd. Sec. 12, Ch. 237, L. 1967; amd. Sec. 2, Ch. 319, L. 1969; amd. Sec. 2, Ch. 160, L. 1974; R.C.M. 1947, 82-2702; amd. Sec. 14, Ch. 184, L. 1979.

2-15-1112. Legislative policy. (1) Whereas, a considerable portion of the citizens of the state of Montana are members of the Indian race; and

(2) Whereas, in the course of the past 80 years these Indian citizens of the state of Montana have been driven from their native valleys and plains and are at present living and residing upon reservations set apart for such purposes by the United States of America, and by virtue of that isolation and of supervision by the federal government, great problems of economic and social significance have arisen and presently exist, and no suitable progress has been made to solve such problems by reason of the fact that the Indians and those who are attempting to aid them in the solution of their problems have never been able to present a coordinated and united effort in solving such problems; and

(3) Whereas, it is hereby declared that it is the legislative policy of this state that the best interests of the Indians will be served by the fostering of a program which is designed to establish and place our Indian citizens in a position to take their rightful place in our society and assume the rights, duties, and privileges of full citizenship and as Indians, it is therefore necessary that a state office of the coordinator of Indian affairs be established so that the problems of the Indians of Montana can be approached and reconciled from a state level in cooperation with the United States of America; and

(4) Whereas, agencies of the federal government retain jurisdiction on Indian reservations in the state of Montana of the administration of economic, social, health, education, and welfare programs for Indians; and

(5) Whereas, Indians who reside off reservations generally qualify for participation in federal programs but are often prohibited from voting on tribal affairs and for tribal officers; and

(6) Whereas, there are sizeable numbers of off-reservation Indians residing in our state of both enrolled and unofficial tribal descent (landless) whose needs for environmental assistance are borne by state and local agencies, and these needs are derived from problems shared by all Indians, whether they reside on reservations or not, and in consideration of their

desire for official voice and representation in seeking solutions to their problems; and

(7) Whereas, programs of the state of Montana should not duplicate those supported by agencies of the federal government as regards jurisdiction of Indian people, and since state responsibility is effected with off-reservation Indians and since those Indians require assistance to coordinate their affairs with various tribal groups and federal agencies where they have no official recognition;

(8) Then therefore, let it be resolved that the coordinator of Indian affairs should assess the problems of all Indians to include those who reside off known reservations and who seek ways and means of communicating their opinions and needs to agencies of responsibility and that the coordinator should actively assist them in organizing their efforts and that he act as representative and spokesman for organized bodies of Indian people, whether reservation or off-reservation classification, whenever his assistance is required.

History: En. Sec. 1, Ch. 203, L. 1951; amd. Sec. 1, Ch. 319, L. 1969; amd. Sec. 1, Ch. 160, L. 1974; R.C.M. 1947, 82-2701.

2-15-1113. Duties and assistance. (1) It shall be the duty of the state coordinator of Indian affairs to carry out the legislative policy set forth in 2-15-1112.

(2) He shall acquaint himself with the problems confronting the Indians of Montana, and he shall advise the legislative and executive branches of the state of Montana of those problems and shall make recommendations for the alleviation thereof. He shall also serve the Montana delegation in the federal congress as an adviser and intermediary in the field of Indian affairs and shall act as spokesman for representative Indian organizations and groups, public and private, whenever his support is solicited.

(3) All executive and legislative agencies of state government may within the area of their expertise and authority provide assistance to tribal councils or their official designees requesting such assistance on any matter relating to coal development on Indian reservation lands and may make an appropriate charge therefor.

History: (1), (2)En. Sec. 3, Ch. 203, L. 1951; amd. Sec. 3, Ch. 319, L. 1969; amd. Sec. 3, Ch. 160, L. 1974; Sec. 82-2703, R.C.M. 1947; (3)En. Sec. 1, Ch. 221, L. 1973; Sec. 82-2705, R.C.M. 1947; R.C.M. 1947, 82-2703, 82-2705.

Part 12

Department of Military Affairs

2-15-1201. Department of military affairs — head. There is a department of military affairs. The department head is the adjutant general of the state, who shall be appointed and serve in the same manner as are directors in 2-15-111. In addition, the adjutant general shall have the qualifications as prescribed in 2-15-1202.

History: En. 82A-1401 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 70, Ch. 94, L. 1974; R.C.M. 1947, 82A-1401.

2-15-1202. Adjutant general — qualifications — salary. (1) The adjutant general shall:

(a) have the rank of major general;

(b) be selected from the active list of the national guard of this state;

(c) be federally recognized in the rank of lieutenant colonel or higher, immediately preceding his appointment;

(d) have had at least 10 years of service as an officer of the active national guard of this state during the 15 years immediately preceding his appointment.

(2) A salary may not be paid to the adjutant general by the state when he is on extended active duty in federal service or is receiving pay as a civilian employee of the federal government.

(3) If, by reason of call or draft of officers of the Montana national guard into federal service, there is no officer having the qualifications as set forth in this section for adjutant general, then any officer of the national guard may be appointed as acting adjutant general.

History: En. 82A-1405 by Sec. 71, Ch. 94, L. 1974; R.C.M. 1947, 82A-1405.

2-15-1203. Assistant adjutant generals. (1) The adjutant general shall appoint, with the approval of the governor, an assistant adjutant general for the army national guard to be selected from the active list of the army national guard and an assistant adjutant general for the air national guard to be selected from the active list of the air national guard.

(2) Each assistant adjutant general shall have the qualifications set forth in 2-15-1202 for appointment as adjutant general. However, he shall have the rank of brigadier general.

History: En. 82A-1406 by Sec. 72, Ch. 94, L. 1974; R.C.M. 1947, 82A-1406.

2-15-1204. Division of disaster and emergency services. A division of disaster and emergency services is established in the department of military affairs.

History: En. 77-2305.1 by Sec. 7, Ch. 335, L. 1977; R.C.M. 1947, 77-2305.1(part(1)).

Part 13

Department of Revenue

2-15-1301. Department of revenue — head. There is a department of revenue. The department head is the director of revenue.

History: En. 82A-1801 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 62, Ch. 391, L. 1973; R.C.M. 1947, 82A-1801.

2-15-1302. Director of revenue. (1) There is the position of director of revenue.

(2) The director of revenue shall be appointed and serve as provided for directors in 2-15-111.

(3) The director is the chief administrative officer of the department.

History: En. 82A-1804 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 64, Ch. 391, L. 1973; R.C.M. 1947, 82A-1804(part).

2-15-1303 through 2-15-1310 reserved.

2-15-1311. Advisory council for Multistate Tax Compact. The director of revenue shall appoint an advisory council for the purpose of complying with Article VI, section 1(b) of the Multistate Tax Compact. The council shall be appointed in accordance with the provisions of 2-15-122.

History: En. 82A-1803 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 63, Ch. 391, L. 1973; R.C.M. 1947, 82A-1803.

Part 14 reserved

Part 15

Education

2-15-1501. State board of education. The state board of education is created in Article X, section 9, subsection (1) of the Montana constitution and is provided for in Title 20, chapter 2.

History: En. 82A-501 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 4, Ch. 51, L. 1974; R.C.M. 1947, 82A-501.

2-15-1502 through 2-15-1504 reserved.

2-15-1505. Board of regents of higher education. The board of regents of higher education created in Article X, section 9, subsection (2), of the Montana constitution consists of seven members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction, and commissioner of higher education are ex officio nonvoting members of the board of regents.

History: En. Sec. 2, Ch. 344, L. 1973; R.C.M. 1947, 75-5610(2).

2-15-1506. Commissioner of higher education. (1) There is a commissioner of higher education who is appointed by the board of regents.

(2) The board of regents shall prescribe the term of the commissioner.

History: En. Sec. 3, Ch. 344, L. 1973; R.C.M. 1947, 75-5611(part).

2-15-1507. Board of public education. The board of public education created in Article X, section 9, subsection (3), of the Montana constitution consists of seven members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction, and commissioner of higher education are ex officio nonvoting members of the board of public education.

History: En. Sec. 2, Ch. 344, L. 1973; R.C.M. 1947, 75-5610(1).

2-15-1508. Appointments to board of public education and board of regents — conditions — vacancy. (1) Appointments to the board of public education and to the board of regents are subject to the following qualifications:

(a) Not more than four may be from one congressional district.

(b) Not more than four may be affiliated with the same political party.

(c) The terms of members appointed to each board shall be 7 years except as provided in subsection (3).

(d) When a vacancy occurs, the governor shall appoint a member for the remainder of the term of the incumbent, and such appointment shall preserve the balance required by subsections (a) and (b) above.

(e) A person may not be appointed to concurrent memberships on the board of public education and the board of regents.

(2) An appointed member of either board shall take and subscribe to the constitutional oath of office and file it with the secretary of state before he may serve as a member of either board.

(3) One seat of the appointed members on the board of regents shall be reserved for membership by a student appointed by the governor. The student shall be registered as a full-time student at a unit of higher education under jurisdiction of the board of regents. The length of term of the student member shall be determined by the governor for not less than 1 year and not more than 4 years. The provisions of subsections (1)(a) and (1)(b) of this section shall not apply to the student member and shall not affect the balance of the remaining appointive membership on the board of regents.

History: En. Secs. 2, 11, Ch. 344, L. 1973; R.C.M. 1947, 75-5610(part), 75-5619.

2-15-1509 and 2-15-1510 reserved.

2-15-1511. Agencies allocated to state board of education. The state historical society, the Montana arts council, and the state library commission are allocated to the state board of education for purposes of planning and coordination. Budget requests to the state for these agencies shall be included with the budget requests of the state board of education; however, the governance, management, and control of the respective agencies shall be vested respectively in the board of trustees of the state historical society, the Montana arts council, and the state library commission.

History: En. 82A-501.1 by Sec. 5, Ch. 51, L. 1974; R.C.M. 1947, 82A-501.1.

2-15-1512. Boards and offices associated with state historical society. (1) (a) There is a board of trustees of the state historical society which is created in Title 22, chapter 3.

(b) The composition, method of appointment, terms of office, and qualifications of board members remain as prescribed by law.

(2) (a) There is a preservation review board within the Montana historical society consisting of nine members.

(b) Members shall be appointed by the governor in the following manner:

(i) five professional persons recognized in the fields of archaeology, history, architecture, or architectural history; however, no more than two members may be appointed from any one of these fields;

(ii) a professional paleontologist;

(iii) the state liaison officer for the federal land and water conservation fund;

(iv) two members of the public who have actively demonstrated an interest in historic preservation matters.

(c) Each member shall serve a 4-year term. A member may be reappointed.

(d) Unless he is a full-time salaried officer or employee of this state or of a political subdivision, each member is entitled to be paid $25 a day for each day in which he is actually and necessarily engaged in board duties and to reimbursement for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred in the performance of board duties.

(3) (a) There is established the historic preservation office within the Montana historical society, to consist of an historic preservation officer and a qualified professional staff.

(b) The historic preservation officer is appointed by the governor.

History: (1)En. 82A-507 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 7, Ch. 51, L. 1974; amd. Sec. 1, Ch. 203, L. 1975; amd. Sec. 23, Ch. 453, L. 1977; R.C.M. 1947, 82A-507(1), (2); (2), (3)En Secs. 1, 3, 6, Ch. 563, L. 1979.

Compiler's Comments

Transition period — staggered terms. Sec. 2, Ch. 563, L. 1979, provided: "(1) For the purpose of providing staggered terms, the initial terms of preservation review board members shall be as follows:

(a) two members appointed for a 1-year term;

(b) two members appointed for 2-year terms;

(c) two members appointed for 3-year terms; and

(d) three members appointed for 4-year terms.

(2) Thereafter, all members of the council shall be appointed for 4-year terms."

2-15-1513. Montana arts council. (1) There is a Montana arts council which is created in Title 22, chapter 2.

(2) The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of council members remain as prescribed by law.

History: En. 82A-508 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 8, Ch. 51, L. 1974; R.C.M. 1947, 82A-508.

2-15-1514. State library commission. (1) There is a state library commission which is created in Title 22, chapter 1.

(2) The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of commission members remain as prescribed by law.

History: En. 82A-509 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 51, L. 1974; R.C.M. 1947, 82A-509.

2-15-1515. Commission on federal higher education programs. (1) There is a commission on federal higher education programs.

(2) The commission consists of:

(a) ex officio, the appointed members of the board of regents of higher education; and

(b) a representative of each accredited private college or university in this state appointed by the governor from the board of trustees of each private college or university. Membership on the commission by these representatives is contingent upon their continued status as trustees.

(3) The non ex officio members shall serve for terms as provided in 2-15-124(2).

(4) The chairman of the board of regents of higher education is chairman of the commission.

(5) The commissioner of higher education is the administrative officer of the commission.

(6) The commission is allocated to the board of regents of higher education for administrative purposes only as provided in 2-15-121.

(7) The commission members are entitled to compensation as provided in 2-15-124(7).

History: En. 82A-512 by Sec. 3, Ch. 220, L. 1974; R.C.M. 1947, 82A-512.

2-15-1516. Fertilizer advisory committee. (1) There is a fertilizer advisory committee.

(2) The committee consists of five members. The members shall represent the fertilizer users of the state. The members shall be appointed by the dean of agriculture of Montana state university with the approval of the chairman of the Montana house of representatives agriculture and irrigation committee, the chairman of the Montana senate agriculture committee, the chairman of the Montana plant food association or its successor organization, the director of the cooperative extension service, and the director of the Montana agricultural experiment station.

(3) The members shall serve staggered 5-year terms. A member may not serve more than 7 consecutive years.

History: En. Sec. 4, Ch. 397, L. 1971; Sec. 3-1732, R.C.M. 1947; amd. and redes. 82A-513 by Sec. 99, Ch. 218, L. 1974; R.C.M. 1947, 82A-513.

2-15-1517. Financial assistance program advisory council. (1) There is a resident student financial assistance program advisory council appointed by the board of regents.

(2) The advisory council consists of:

(a) three practicing financial aid officers;

(b) one chief administrator of a postsecondary educational institution;

(c) one chief fiscal officer of a postsecondary educational institution; and

(d) one student enrolled full time at a postsecondary educational institution.

(3) No more than one member of the advisory council may be from the same postsecondary institution.

(4) The advisory council serves at the pleasure of the board of regents.

History: En. 75-9405 by Sec. 5, Ch. 515, L. 1977; R.C.M. 1947, 75-9405.

2-15-1518. Director of fire services training school. (1) The board of public education shall appoint the director of the fire services training school.

(2) The director may be removed for cause.

(3) The director must have the following qualifications:

(a) a bachelor's degree in a field of study related to fire protection; or

(b) 5 years' experience in an organized training program as an instructor and 7 years' experience as a firefighter or fire combat officer.

History: En. 75-7721 by Sec. 6, Ch. 104, L. 1977; R.C.M. 1947, 75-7721(part).

2-15-1519. Fire services training advisory council. (1) The board of public education shall appoint a fire services training advisory council to work with the director of the fire services training school. The membership of the council shall include the following:

(a) a fire chief;

(b) a volunteer firefighter;

(c) a paid firefighter;

(d) a fire service instructor;

(e) a person involved in fire prevention;

(f) an engineering representative of the insurance services office;

(g) a representative of the fire protection engineering industry;

(h) a fire control officer recommended by the administrator of the division of forestry.

(2) The board shall solicit and consider the recommendations of appropriate organizations and associations of fire service personnel in making appointments under subsection (1) of this section.

(3) Members appointed shall serve for a 4-year term. If a vacancy occurs, a member shall be appointed to fill the unexpired term. A member may be reappointed.

(4) The state fire marshal and director of the fire services training school are ex officio members of the council.

History: **En. 75-7718 by Sec. 3, Ch. 104, L. 1977; R.C.M. 1947, 75-7718.**

2-15-1520. Guaranteed student loan advisory council — terms, compensation. (1) There is a student loan advisory council appointed by the board of regents.

(2) The council consists of seven members. Each member shall be appointed for a term of 3 years.

(3) Appointments to the council must conform to the following requirements:

(a) One member must be a representative of a private eligible educational institution, as defined in 20-26-1101.

(b) Two members must be representatives of a public eligible educational institution, as defined in 20-26-1101. One must be a representative of higher education, and one must be a representative for the postsecondary vocational-technical centers.

(c) Two members must be representatives of approved lenders.

(d) One member must be a full-time student registered at an eligible educational institution, as defined in 20-26-1101.

(e) One member must be a representative of the office of the commissioner of higher education.

(4) A chairman must be selected by the council from its membership at the first meeting of each fiscal year.

(5) Each member of the council is entitled to compensation and reimbursement for travel expenses as provided in 2-15-122(5).

History: **En. Sec. 1, Ch. 691, L. 1979.**

Compiler's Comments

Transition period — appointment of council members. Sec. 2, Ch. 691, L. 1979, provided: "(1) For the purpose of providing staggered terms, the initial terms of council members shall be as follows:

(a) three members appointed for a 1-year term;

(b) two members appointed for 2-year terms; and

(c) two members appointed for 3-year terms.

(2) Thereafter, all members of the council shall be appointed for 3-year terms."

Part 16

Department of Professional and Occupational Licensing

2-15-1601. Department of professional and occupational licensing — head. There is a department of professional and occupational licensing. The department head is a director of professional and occupational licensing appointed by the governor in accordance with 2-15-111.

History: **En. 82A-1601 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1601.**

2-15-1602 through 2-15-1604 reserved.

2-15-1605. Board of medical examiners. (1) There is a Montana state board of medical examiners.

(2) The board consists of seven members appointed by the governor with the consent of the senate. Appointments made when the legislature is not in session may be confirmed at the next session.

(3) The members are:

(a) six members having the degree of doctor of medicine; and

(b) one member having the degree of doctor of osteopathy.

(4) The members having the degree of doctor of medicine may not be from the same county. Each member shall be a citizen of the United States. Each member shall have been licensed and shall have practiced medicine in this state for at least 5 years and shall have been a resident of this state for at least 5 years; however, the 5-year requirement of practice and residency shall be waived for the initial term of appointment of the member having the degree and license of doctor of osteopathy.

(5) Each member shall serve for a term of 7 years. A term commences on September 1 of each year of appointment. A member may, upon notice and hearing, be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (5)En. Sec. 4, Ch. 338, L. 1969; amd. Sec. 2, Ch. 203, L. 1971; Sec. 66-1013, R.C.M. 1947; amd. and redes. 82A-1602.15 by Sec. 92, Ch. 350, L. 1974; amd. Sec. 1, Ch. 83, L. 1975; Sec. 82A-1602.15, R.C.M. 1947; (6)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 83, L. 1975; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.15; amd. Sec. 15, Ch. 184, L. 1979.

2-15-1606. Board of dentistry. (1) There is a board of dentistry.

(2) The board consists of five dentists and one dental hygienist, all appointed by the governor. The Montana dental association and the Montana dental hygienists' association shall each present to the governor, within 15 days after its regular annual meeting, a list of not less than five candidates from which appointments for vacancies on the board occurring during the ensuing year may be made. At all times at least three members of the board shall be appointed from the list of candidates submitted by the Montana dental association and one member shall be appointed from the list submitted by the Montana dental hygienists' association. Each member shall be licensed to practice a dental profession in this state, shall have actively practiced in this state for at least 5 continuous years immediately before his appointment, and shall be actively engaged in practice while serving on the board. Each member shall be a citizen of the United States and a resident of this state.

(3) Each member shall serve for a term of 5 years. The governor may remove a member only for neglect or cause.

(4) The governor shall fill any vacancy within 30 days.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 1, Ch. 48, L. 1935; re-en. Sec. 3115.1, R.C.M. 1935; Sec. 66-901, R.C.M. 1947; amd. and redes. 82A-1602.9 by Sec. 76, Ch. 350, L. 1974; Sec. 82A-1602.9, R.C.M.

1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.9; amd. Sec. 1, Ch. 316, L. 1979.

2-15-1607. Board of osteopathic physicians. (1) There is a board of osteopathic physicians.

(2) The board consists of three members appointed by the governor. Each member shall be a qualified practicing resident osteopath and a graduate of a legally authorized school of osteopathy.

(3) Each member shall serve for a term of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 1, p. 48, L. 1901; rep. and re-en. Sec. 1, Ch. 51, L. 1905; re-en. Sec. 1594, Rev. C. 1907; re-en. Sec. 3125, R.C.M. 1921; re-en. Sec. 3125, R.C.M. 1935; Sec. 66-1401, R.C.M. 1947; amd. and redes. 82A-1608.20 by Sec. 140, Ch. 350, L. 1974; Sec. 82A-1602.20, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.20.

2-15-1608. Board of podiatry examiners. (1) There is a board of podiatry examiners.

(2) The board consists of three members, all of whom are licensed podiatrists appointed by the governor to 3-year terms, selected from a list of six podiatrists submitted by the Montana association of podiatrists. The members shall be residents of this state who have engaged in the active practice of podiatry in this state for at least 2 years and are of high integrity and ability. The governor shall fill a vacancy on the board from the same list of podiatrists.

(3) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1), (2)En. 82A-1602.6 by Sec. 356, Ch. 350, L. 1974; amd. Sec. 4, Ch. 176, L. 1977; Sec. 82A-1602.6, R.C.M. 1947; (3)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.6.

2-15-1609. Board of pharmacists. (1) There is a board of pharmacists.

(2) The board consists of three members appointed by the governor. The governor shall appoint the members from a list submitted annually by the Montana state pharmaceutical association. The list shall contain the names of five qualified persons for each appointment. Each member shall be a graduate of the college of pharmacy of the university of Montana or of a college or school of pharmacy recognized and approved by or a member of the American association of colleges of pharmacy. Each member shall have at least 5 consecutive years of practical experience as a pharmacist immediately before his appointment. However, one member may be a registered pharmacist of 15 years' practical experience and actually engaged in the practice of pharmacy. A member who, during his term of office, ceases to be actively engaged in the practice of pharmacy in this state, shall be automatically disqualified from membership on the board.

(3) Each member shall serve for a term of 3 years. A member shall be removed from office by the governor on proof of malfeasance or misfeasance in office, after reasonable notice of charges against him and after a hearing.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 643, Pol. C. 1895; re-en. Sec. 1625, Rev. C. 1907; re-en. Sec. 4, Ch. 134, L. 1915; re-en. Sec. 3173, R.C.M. 1921; re-en. Sec. 3173, R.C.M. 1935; amd. Sec. 3, Ch. 175, L. 1939; Sec. 66-1503, R.C.M. 1947; amd. and redes. 82A-1602.21 by Sec. 149, Ch. 350, L. 1974; Sec. 82A-1602.21, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.21.

2-15-1610. Board of nursing. (1) There is a board of nursing.

(2) The board consists of eight members appointed by the governor. The members are:

(a) five registered professional nurses who constitute the board—professional nursing administration. At least three members shall have had at least 3 years in administrative, teaching, or supervisory experience in schools of nursing. Each member shall:

(i) be a graduate of an approved school of nursing;

(ii) be a licensed nurse in this state;

(iii) have had at least 5 years' experience in nursing following graduation; and

(iv) have been actively engaged in nursing for at least 3 years immediately before appointment.

(b) three practical nurses who constitute the board—practical nursing administration. Each member shall:

(i) be a graduate of a school of practical nursing;

(ii) be a licensed practical nurse in this state;

(iii) have had at least 3 years' experience as a practical nurse; and

(iv) have been actively engaged in the practice of practical nursing for at least 2 years immediately before appointment.

(3) All members shall have been residents of this state for at least 1 year before appointment and be citizens of the United States.

(4) All members shall serve for a term of 5 years, and a member may not be appointed for more than two consecutive terms. The governor may remove a member from the board for neglect of a duty required by law or for incompetency or unprofessional or dishonorable conduct.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (4)En. 82A-1602.18 by Sec. 357, Ch. 350, L. 1974; Sec. 82A-1602.18, R.C.M. 1947; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.18.

2-15-1611. Board of nursing home administrators. (1) There is a board of nursing home administrators.

(2) The board consists of five voting members appointed by the governor. No more than two members shall be nursing home administrators. One member shall represent the public at large and must be 55 years of age or

older at the time of appointment. The other two members shall be representatives of professions or institutions concerned with the care of chronically ill and infirm aged patients and may not be from the same profession or have a financial interest in a nursing home.

(3) The director of the department of health and environmental sciences or his designee and the director of the department of social and rehabilitation services or his designee are ex officio, nonvoting members of the board.

(4) The appointee representing the public at large shall be selected by the governor. The remaining appointees shall be selected from a list of three nominees submitted for each appointee by the board of directors of the Montana nursing home association, inc.

(5) Each appointed member shall serve for a term of 5 years. Any vacancy occurring in the position of an appointive member shall be filled by the governor for the unexpired term in the same manner provided for in subsection (4).

(6) Appointive members may be removed by the governor only for cause.

(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (6)En. Sec. 2, Ch. 363, L. 1969; amd. Sec. 1, Ch. 434, L. 1973; amd. Sec. 2, Ch. 483, L. 1973; amd. Sec. 1, Ch. 153, L. 1974; Sec. 66-3102, R.C.M. 1947; amd. and redes. 82A-1602.17 by Sec. 306, Ch. 350, L. 1974; amd. Sec. 1, Ch. 95, L. 1975; Sec. 82A-1602.17, R.C.M. 1947; (7)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.17(1) thru (6); amd. Sec. 1, Ch. 163, L. 1979.

2-15-1612. Board of optometrists. (1) There is a board of optometrists.

(2) The board consists of four members appointed by the governor. Three members must be registered optometrists of this state and actually engaged in the exclusive practice of optometry in this state during their terms of office. One member must be a representative of the public who is not engaged in the practice of optometry.

(3) Each member shall serve for a term of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. 82A-1602.19 by Sec. 358, Ch. 350, L. 1974; Sec. 82A-1602.19, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.19; amd. Sec. 1, Ch. 41, L. 1979.

Compiler's Comments

Transition. Sec. 2, Ch. 41, L. 1979, provided: "Persons who are members of the board of optometrists on the effective date of this act shall serve the remainder of their 6-year terms. All appointments or reappointments to the board made after the effective date of this act are for 4-year terms as provided in section 1, subsection (3)."

Effective date. Ch. 41, L. 1979, provided: "This act is effective on its passage and approval." Approved February 20, 1979.

2-15-1613. Board of chiropractors. (1) There is a board of chiropractors.

(2) The board consists of three members appointed by the governor. The members shall be practicing chiropractors of integrity and ability who shall be residents of this state and who have practiced chiropractic continuously

in this state for at least 1 year. No two members shall be graduates of the same school or college of chiropractic.

(3) Each member shall serve for a term of 3 years. No member may be appointed for more than two consecutive terms. A member may be removed from office by the governor on sufficient proof of the member's inability or misconduct.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3138, R.C.M. 1921; re-en. Sec. 3138, R.C.M. 1935; Sec. 66-501, R.C.M. 1947; amd. and redes. 82A-1602.7 by Sec. 45, Ch. 350, L. 1974; amd. Sec. 2, Ch. 579, L. 1977; Sec. 82A-1602.7, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.7.

2-15-1614. Board of radiologic technologists. (1) There is a board of radiologic technologists.

(2) The board consists of seven members appointed by the governor:

(a) two members shall be radiologists licensed to practice medicine in Montana;

(b) one member shall be a physician licensed to practice medicine in Montana;

(c) one member shall be a chiropractor licensed to practice in Montana; and

(d) three members shall be radiologic technologists registered with the American registry of radiologic technologists (ARRT) who, with the exception of the first appointed members, are licensed radiologic technologists.

(3) Vacancies in unexpired terms shall be filled for the remainder of the term.

(4) Each member shall serve for a term of 3 years.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. 82A-1602.28 by Sec. 3, Ch. 336, L. 1975; R.C.M. 1947, 82A-1602.28(part); amd. Sec. 16, Ch. 184, L. 1979.

2-15-1615. Board of speech pathologists and audiologists. (1) There is a board of speech pathologists and audiologists.

(2) The board consists of five members, four of whom shall:

(a) be appointed by the governor from names submitted to him by the Montana speech and hearing association;

(b) have been residents of this state for at least 1 year immediately preceding their appointment; and

(c) have been engaged in rendering services to the public, teaching, or performing research in the field of speech pathology or audiology for at least 5 years immediately preceding their appointment.

(3) At least two members of the board shall be speech pathologists and at least two shall be audiologists, with the remaining member to be a public member who is a consumer of speech pathology or audiology services and who is not a licentiate of the board or of any other board within the department. All board members, except the public member, shall at all times be validly licensed in speech pathology or audiology.

(4) Not less than 60 days before the end of each calendar year, the association shall recommend at least three and not more than five persons for each vacancy occurring at the end of the calendar year. In the event of a vacancy for an unexpired term, the association shall expeditiously recommend at least two and not more than three persons to fill the vacancy and the governor shall appoint one of those persons to fill the unexpired term.

(5) Appointments shall be for 3-year terms with no person eligible to serve more than two full consecutive terms. Terms begin on the first day of the calendar year and end on the last day of the calendar year.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. 82-1602.31 by Sec. 5, Ch. 543, L. 1975; R.C.M. 1947, 82A-1602.31(part); amd. Sec. 17, Ch. 184, L. 1979.

2-15-1616. Board of hearing aid dispensers. (1) There is a board of hearing aid dispensers.

(2) The board consists of five members appointed by the governor. The members are:

(a) one member appointed from a list submitted by the Montana academy of oto-ophthalmology. This member shall hold or be eligible for a certificate of qualification from the American board of otolaryngology.

(b) one member appointed from a list submitted by the Montana speech and hearing association. This member shall hold or be eligible for a certificate of clinical competence in audiology from the American speech and hearing association.

(c) three members appointed from a list submitted by the Montana hearing aid dealers' society. These members shall have been qualified dispensers and fitters of hearing aids for at least 5 years before their appointment to the board.

(d) one alternate member shall be appointed from each of the three lists to serve when a regular member cannot attend a scheduled meeting.

(3) Each member shall serve for a term of 3 years. A member may not be reappointed within 1 year after the expiration of his second consecutive full term. If a vacancy occurs on the board, the governor shall appoint a person from the same list as the member whose term was not completed.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 4, Ch. 204, L. 1969; Sec. 66-3004, R.C.M. 1947; amd. and redes. 82A-1602.12 by Sec. 293, Ch. 350, L. 1974; Sec. 82A-1602.12, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.12.

2-15-1617. Board of psychologists. (1) There is a board of psychologists.

(2) The board consists of three members appointed by the governor. The governor shall appoint all members, including a member filling a vacancy for an unexpired term, from the list of licensed psychologists in this state. A member may not succeed himself but may be reappointed after 3 years following the termination of his previous appointment. Each member shall be a citizen of the United States and a resident of this state.

(3) Each member shall serve for a term of 3 years.

History: En. Sec. 4, Ch. 73, L. 1971; Sec. 66-3204, R.C.M. 1947; amd. and redes. 82A-1602.27 by Sec. 314, Ch. 350, L. 1974; R.C.M. 1947, 82A-1602.27.

2-15-1618. Board of veterinarians. (1) There is a board of veterinarians.

(2) The board consists of six members appointed by the governor, five of whom shall be licensed veterinarians and one of whom shall be a public member who is a consumer of veterinary services and who shall not be a licentiate of the board or of any other board under the department of professional and occupational licensing.

(3) The Montana state veterinary medical association shall, at each annual meeting, nominate twice the number of veterinarian board members to be appointed that year. The names of these nominees shall be annually transmitted, under seal, to the governor before July 1. The governor shall, before August 1, appoint from this list the board members to fill the vacancies that will occur July 31. If no nominee has the required qualifications to be on the board, the governor may appoint any licensed and registered veterinarian.

(4) Each veterinarian member shall be a reputable licensed veterinarian who has graduated from a college authorized by law to confer degrees and have educational standards equal to those approved by the American veterinary medical association. Each veterinarian member shall have actually and legally practiced veterinary medicine in either private practice or public service in this state for at least 5 years immediately before his appointment.

(5) Each member shall serve for a term of 5 years. The governor may, after notice and hearing, remove a member for misconduct, incapacity, or neglect of duty.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (5)En. Sec. 1, Ch. 82, L. 1913; re-en. Sec. 3217, R.C.M. 1921; re-en. Sec. 3217, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1955; Sec. 66-2201, R.C.M. 1947; amd. and redes. 82A-1601.24 by Sec. 204, Ch. 350, L. 1974; amd. Sec. 4, Ch. 135, L. 1975; Sec. 82A-1602.24, R.C.M. 1947; (6)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.24.

2-15-1619. Board of morticians. (1) There is a board of morticians.

(2) The board consists of six members appointed by the governor with the consent of the senate. Five members shall be licensed morticians. One member shall be a representative of the public who is not engaged in the practice of mortuary science or funeral directing.

(3) Each member shall serve for a term of 5 years.

(4) The public member may not participate in administering license examinations and mortuary inspections.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (4)En. Sec. 2, Ch. 41, L. 1963; Sec. 66-2702, R.C.M. 1947; amd. and redes 82A-1602.16 by Sec. 261, Ch. 350, L. 1974; amd. Sec. 1, Ch. 233, L. 1977; Sec. 82A-1602.16, R.C.M 1947; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L

1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.16.

2-15-1620 through 2-15-1624 reserved.

2-15-1625. Board of barbers. (1) There is a board of barbers.

(2) The board consists of three members appointed by the governor. Each member shall be a practicing barber who has been a barber in this state for at least 5 years immediately before his appointment.

(3) Each member shall serve for a term of 3 years. The governor may remove a member for cause.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 6, Ch. 127, L. 1929; re-en. Sec. 3228.24. R.C.M. 1935; Sec. 66-406, R.C.M. 1947; amd. and. redes. 82A-1602.5 by Sec. 38, Ch. 350, L. 1974; Sec. 82A-1602.5, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.5.

2-15-1626. Board of cosmetologists. (1) There is a board of cosmetologists.

(2) The board consists of three members who may be appointed by the governor from a list of six persons recommended by the Montana state hairdressers' association. Each member appointed shall have actively engaged in the profession of cosmetology for at least 5 years before his appointment and have been a resident of this state for at least 5 years immediately before his appointment. Each member shall be at least 18 years old and a graduate of a high school or its equivalent. No two members of the board may be members of or affiliated with a school of cosmetology.

(3) Each member shall serve for a term of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 4, Ch. 104, L. 1929; re-en. Sec. 3228.4, R.C.M. 1935; amd. Sec. 4, Ch. 222, L. 1939; amd. Sec. 4, Ch. 244, L. 1961; Sec. 66-804, R.C.M. 1947; redes. 82A-1602.8 and amd. by Sec. 1, Ch. 196, L. 1973; amd. Sec. 1, Ch. 511, L. 1977; Sec. 82A-1602.8, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.8.

2-15-1627. Board of massage therapists. (1) There is a board of massage therapists.

(2) The board consists of three members appointed by the governor. Each member shall be a resident of this state and shall have been a masseur continuously in this state for at least 1 year. Each member shall have integrity and ability as a masseur.

(3) Each member shall serve for a term of 3 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 3, Ch. 302, L. 1967; Sec. 66-2903, R.C.M. 1947; amd. and redes. 82A-1602.14 by Sec. 284, Ch. 350, L. 1974; Sec. 82A-1602.14, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99,

L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.14.

2-15-1628. Board of physical therapy examiners. (1) There is a board of physical therapy examiners.

(2) The board consists of three members appointed by the governor, upon the recommendation of the Montana chapter of the American physical therapy association, for a term of 3 years.

(3) Each member must have been a resident of Montana and a practicing physical therapist for the 3 years preceding appointment to the board but need not be a member of the Montana chapter of the American physical therapy association.

(4) Within 30 days following July 1, 1979, the governor shall make initial appointments to the board of physical therapy examiners. He shall appoint one member each to hold office for terms of 1 year, 2 years, and 3 years, respectively. At the end of each member's appointed term, a member shall be appointed for a full 3-year term.

(5) Ninety days prior to the end of the board member's term of office a nominating committee comprised of members and nonmembers of the Montana chapter of the American physical therapy association shall submit to the governor a list of individuals qualified to serve as a member of the board. The list shall contain not less than three times the number of candidates needed to fill the vacancies.

(6) A vacancy on the board must be filled in the same manner as the original appointment, except that the names of qualified individuals must be submitted to the governor upon notice of a pending vacancy or within 10 days after a vacancy occurs. These appointments may only be made for the unexpired portions of the term.

(7) No member may be appointed for more than two consecutive terms.

(8) The governor may remove any board member for negligence in performance of any duty required by law and for incompetence or unprofessional or dishonorable conduct.

(9) A board member is not liable to civil action for any act performed in good faith in the execution of the duties required by Title 37, chapter 11.

(10) The board shall provide for its organizational structure by rule, which shall include a chairman, vice-chairman, and secretary-treasurer.

(11) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. Sec. 1, Ch. 491, L. 1979.

Compiler's Comments

Preamble. The preamble to HB 571 (Ch. 491, L. 1979) read as follows: "WHEREAS, the practice of physical therapy within the state of Montana is a privilege granted by legislative authority and is not a right of individuals; and

WHEREAS, it is necessary and in the best interests of the health, safety, and welfare of the people of Montana to provide laws covering the granting of licenses and their regulations so that the public may be protected from the unprofessional, unauthorized, or unqualified practice of physical therapy and to license only competent physical therapists to practice physical therapy."

Codification. Subsection 1, Sec. 20, Ch. 491, L. 1979, provided: "Section 1 is intended to be codified as an integral part of Title 2, chapter 15, part 16, and the provisions contained in Title 2, chapter 15, part 16, apply to section 1."

2-15-1629 and 2-15-1630 reserved.

2-15-1631. Board of sanitarians. (1) There is a board of sanitarians.

(2) The board shall consist of three members appointed by the governor. Each member shall be a resident of this state and a registered sanitarian. Each member shall have a minimum of 3 years of experience practicing as a sanitarian in the state of Montana.

(3) Members shall serve for 3-year terms. One term shall expire on July 1 of each year.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. 69-3412, 69-3413 by Secs. 3, 4, Ch. 314, L. 1974; R.C.M. 1947, 69-3412, 69-3413(part); amd. Sec. 18, Ch. 184, L. 1979.

2-15-1632. Board of water well contractors. (1) There is a board of water well contractors.

(2) The board shall be composed of five voting members, consisting of:

(a) one technical adviser hydrogeologist appointed by the Montana bureau of mines and geology;

(b) two licensed Montana water well contractors appointed by the governor with the concurrence of the senate;

(c) one appointed by the director of natural resources and conservation; and

(d) one appointed by the director of health and environmental sciences.

(3) The members of the board shall have been bona fide residents of this state for a period of a least 3 years prior to such appointment.

(4) The members of the board shall serve for a term of 3 years. In case of a vacancy in the office of a member of the board, an appointment shall be made to fill the same in the manner prescribed by the constitution and laws of this state.

(5) The members of the board shall, upon entering on the duties of their office, take and subscribe to the oath specified in the constitution of Montana, and such oath shall be filed in the office of the secretary of state.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (5)En. 82A-1602.26 by Sec. 3, Ch. 232, L. 1974; Sec. 361, Ch. 350, L. 1974; Sec. 82A-1602.26, R.C.M. 1947; (6)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.26(1) thru (3).

2-15-1633 through 2-15-1640 reserved.

2-15-1641. Board of public accountants. (1) There is a board of public accountants.

(2) The board consists of five members appointed by the governor. The members are:

(a) three certified public accountants certified under Title 37, chapter 50, who are certified and actively engaged in the practice of public accounting and who have held a valid certificate for at least 5 years before their appointment. The Montana society of certified public accountants shall submit to the governor annually a list of names of two candidates from which the appointments of these members may be made. However, the governor is not restricted to the names on this list. These members may not be residents of the same county.

(b) one licensed public accountant licensed under Title 37, chapter 50, who is actively engaged in the practice of public accounting and who has held a valid license for at least 5 years before his appointment. When an appointment in this category is necessary, the Montana society of public accountants shall submit to the governor a list of names of two candidates from which the appointment may be made. However, the governor is not restricted to the names on this list. If there is no licensed public accountant known by the governor to be qualified and willing to serve in this position, the governor may appoint a certified public accountant meeting the qualifications provided in (2)(a).

(c) one member of the general public who is not engaged in the practice of public accounting.

(3) Each appointment is subject to confirmation by the senate and shall be submitted for consideration at the next regular session following appointment.

(4) Each member shall serve for a term of 3 years. A member who has served two successive complete terms is not eligible for reappointment until after the lapse of 1 year. The governor may, after a hearing, remove a member for neglect of duty or other just cause.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (4)En. Sec. 1, Ch. 118, L. 1969; Sec. 66-1813, R.C.M. 1947; amd. and redes. 82A-1602.2 by Sec. 161, Ch. 350, L. 1974; Sec. 82A-1602.2, R.C.M. 1947; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.2; amd. Sec. 3, Ch. 684, L. 1979.

Compiler's Comments

Board reestablished. Sec. 1, Ch. 684, L. 1979, provided: "The board of public accountants created by 2-15-1641 is reestablished for a period of 6 years pursuant to 2-18-122." The reference to 2-18-122 apparently should be to 2-8-122.

Continuation of funds. Sec. 23, Ch. 684, L. 1979, provided: "All unexpended balances of appropriations, allocations, or other funds of the board of public accountants shall continue to be used by the board of public accountants, as reestablished in this act, for the purpose of regulating the practice of accounting."

Transition. Sec. 24, Ch. 684, L. 1979, provided: "The terms of office of persons currently members of the Board of Public Accountants are not affected by this act. The governor shall make the appointment necessary to comply with the change in board composition contained in section 3 of this act upon the first available vacancy suitable for that purpose."

Effective date of certain sections. Sec. 27, Ch. 684, L. 1979, provided: "Sections 1 and 2 are effective on passage and approval." Approved May 9, 1979.

2-15-1642. Repealed. Sec. 14, Ch. 497, L. 1979.

Compiler's Comments

Termination of board of real estate. Sec. 11, Ch. 497, L. 1979 provided: "Notwithstanding the provision of 2-8-103(1), the board of real estate terminates on the effective date of this act. Section 2-8-121 does not apply to the board of real estate."

2-15-1643. Board of abstracters. (1) There is a board of abstracters.

(2) The board consists of three members appointed by the governor. Each member shall be a registered abstracter during his term. Members shall be from different counties.

(3) Each member shall serve for a term of 3 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 2, Ch. 105, L. 1931; re-en. Sec. 4139, R.C.M. 1935; Sec. 66-2102, R.C.M. 1947; amd. and redes. 82A-1602.1 by Sec. 194, Ch. 350, L. 1974; Sec. 82A-1602.1, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.1.

2-15-1644. Board of realty regulation. (1) There is a board of realty regulation.

(2) The board consists of five members appointed by the governor with the consent of the senate. Three members shall be licensed real estate brokers or salesmen who are actively engaged in the real estate business as a broker or salesman in this state. Two members shall be representatives of the public who are not state government officers or employees and who are not engaged in business as a real estate broker or salesman. The members shall be:

(a) residents of this state; and

(b) appointed so not more than three members are from the same congressional district.

(3) Not more than three members, including the chairman, may be from the same political party.

(4) The members shall serve staggered terms of 4 years. A member may not serve more than two terms or any portion thereof.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. Sec. 1, Ch. 497, L. 1979.

Compiler's Comments

Transfer of funds. Sec. 9, Ch. 497, L. 1979, provided: "All unexpended balances of appropriations, allocations, or other funds of the board of real estate shall be transferred to the board of realty regulation on the effective date of this act to be used for the purpose of regulating the real estate industry.

Transition. Sec. 10, Ch. 497, L. 1979, provided: "All orders and rules relating to regulation of the real estate industry made by the board of real estate remain in full force and effect until revoked or modified in accordance with law by the board of realty regulation. The records and documents of the board of real estate are transferred to the board of realty regulation. Licenses, permits, and certificates issued prior to the effective date of this act remain valid under the same terms and conditions as when issued and are subject to the provisions of Title 37, chapter 51."

Initial appointments. Sec. 12, Ch. 497, L. 1979, provided: "Within 30 days of the effective date of this act, the governor shall appoint the initial board of realty regulation. The initial terms shall consist of one term of 1 year, one term of 2 years, one term of 3 years, and two terms of 4 years."

Codification. Sec. 13, Ch. 497, L. 1979, provided: "Section 1 is intended to be codified in Title 2, chapter 15, part 16, and the provisions of Title 2, chapter 15, part 16, apply to section 1."

Effective date. Sec. 15, Ch. 497, L. 1979, provided: "This act is effective on passage and approval." Approved April 9, 1979.

2-15-1645 through 2-15-1650 reserved.

2-15-1651. Board of architects. (1) There is a board of architects.

(2) The board consists of four members appointed by the governor with the consent of the senate. The members are:

(a) two registered architects who have been in continuous practice for 3 years before their appointment;

(b) one registered architect who is on the staff of the Montana state university school of architecture; and

(c) one representative of the public who is not engaged in or directly connected with the practice of architecture.

(3) Each member must have been a resident of Montana for 4 years prior to appointment.

(4) Each member shall serve for a term of 3 years.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 1, Ch. 158, L. 1917; re-en. Sec. 3229, R.C.M. 1921; re-en. Sec. 3229, R.C.M. 1935; amd. Sec. 1, Ch. 439, L. 1973; Sec. 66-101, R.C.M. 1947; amd. and redes. 82A-1602.3 by Sec. 24, Ch. 350, L. 1974; Sec. 82A-1602.3, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.3; amd. Sec. 3, Ch. 388, L. 1979.

Compiler's Comments

Board reestablished. Sec. 1, Ch. 388, L. 1979, provided: "The board of architects created by 2-15-1651 is reestablished for a period of 6 years pursuant to 2-8-122." Sec. 13, Ch. 388, L. 1979, provided: "Sections 1 and 2 are effective on passage and approval." Approved March 26, 1979.

Transition. Sec. 10, Ch. 388, L. 1979, provided: "Section 3 [2-15-1651, as amended by Ch. 388, L. 1979] does not affect the terms of office of persons who are members of the board on July 1, 1979, and such members shall serve the remainder of their unexpired terms. All appointments made and vacancies filled after July 1, 1979, must be in accordance with section 3."

2-15-1652. Board of landscape architects. (1) There is a board of landscape architects.

(2) The board consists of five members. Members of the board shall be appointed by the governor and must be residents of this state. Three members must be landscape architects licensed under Title 37, chapter 66. Two members must be representatives of the public who are not engaged in the practice of landscape architecture.

(3) The board is allocated to the department of professional and occupational licensing for administrative purposes only as prescribed in 2-15-121.

(4) Terms are for 4 years. Each member shall hold office until the appointment and qualification of his successor. Vacancies occurring prior to the expiration of the term shall be filled in the same manner as original appointments. No member may serve more than 8 consecutive years.

History: En. 82A-1602.30 by Sec. 8, Ch. 476, L. 1975; amd. Sec. 24, Ch. 453, L. 1977; R.C.M. 1947, 82A-1602.30(part (1)), (3); amd. Sec. 3, Ch. 325, L. 1979.

Compiler's Comments

Board reestablished. Sec. 1, Ch. 325, L. 1979, provided: "The board of landscape architects created by 2-15-1652 is reestablished for a period of 6 years pursuant to 2-8-122."

Transition. Sec. 12, Ch. 325, L. 1979, provided: "Section 3 does not affect the term of office of a person who is a member of the board of landscape architects on July 1, 1979, and he shall serve the remainder of his unexpired term. All appointments made and vacancies filled after July 1, 1979, must be in accordance with section 3."

2-15-1653. Board of professional engineers and land surveyors. (1) There is a board of professional engineers and land surveyors.

(2) The board consists of nine members appointed by the governor. The members are:

(a) five professional engineers who have been engaged in the practice of engineering for at least 12 years and who have been in responsible charge of engineering teaching or important engineering work for at least 5 years and registered in Montana for at least 5 years. No more than two of these members may be from the same branch of engineering.

(b) two registered and practicing land surveyors who have been engaged in the practice of land surveying for at least 12 years and who have been in responsible charge of land surveying or important land surveying work for at least 5 years and registered in Montana for at least 5 years;

(c) two representatives of the public who are not engaged in or directly connected with the practice of engineering or land surveying.

(3) Each member shall be a citizen of the United States and a resident of this state. A member, after serving three consecutive terms, shall not be reappointed.

(4) Each member shall serve for a term of 4 years. The governor may remove a member for misconduct, incompetency, neglect of duty, or for any other sufficient cause.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (4)En. Sec. 4, Ch. 150, L. 1957; amd. Sec. 2, Ch. 282, L. 1969; Sec. 66-2327, R.C.M. 1947; amd. and redes. 82A-1602.11 by Sec. 215, Ch. 350, L. 1974; amd. Sec. 1, Ch. 366, L. 1975; Sec. 82A-1602.11, R.C.M. 1947; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.11; amd. Sec. 3, Ch. 408, L. 1979.

Compiler's Comments

Board reestablished. Sec. 1, Ch. 408, L. 1979, provided: "The board of professional engineers and land surveyors, created by 2-15-1653, is reestablished for a period of 6 years pursuant to 2-8-122."

Transition. Sec. 9, Ch. 408, L. 1979, provided: "A person appointed prior to July 1, 1979, to the board of professional engineers and land surveyors for a 5-year term shall serve until the expiration of such term. A member of the board appointed after July 1, 1979, shall serve for a term of 4 years as provided in section 3."

Effective date. Sec. 10, Ch. 408, L. 1979, provided: "This act is effective on passage and approval." Approved March 31, 1979.

2-15-1654. State electrical board. (1) There is a state electrical board.

(2) The board consists of five members appointed by the governor with the consent of the senate, who shall be residents of this state. Two members of the board shall represent the public. Two members of the board shall be licensed electricians. One member shall be a master licensed electrical contractor.

(3) The members of the board shall serve for a term of 5 years with their terms of office so arranged that one term expires on July 1 of each year.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 4, Ch. 148, L. 1965; amd. Sec. 1, Ch. 374, L. 1973; Sec. 66-2804, R.C.M. 1947; amd. and redes. 82A-1602.10 by Sec. 271, Ch. 350, L. 1974; amd. Sec. 58, Ch. 439, L. 1975; Sec. 82A-1602.10, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974;

Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.10(1) thru (3); amd. Sec. 3, Ch. 546, L. 1979.

Compiler's Comments

Board reestablished. Sec. 1, Ch. 546, L. 1979, provided: "The state electrical board created by 2-15-1654 is reestablished for a period of 6 years pursuant to 2-8-122."

Effective date. Sec. 18, Ch. 546, L. 1979, provided: "This act is effective on passage and approval." Approved April 12, 1979.

2-15-1655. Board of plumbers. (1) There is a board of plumbers.

(2) The board consists of nine members appointed by the governor. The members are:

(a) two master plumbers and two journeyman plumbers who are at least 18 years old, who have been residents of this state for more than 1 year, and who have been duly licensed master or journeyman plumbers at least 5 out of the last 8 years immediately preceding their appointment;

(b) one registered professional engineer qualified in mechanical engineering;

(c) three representatives of the public who are not engaged in the business of installing or selling plumbing equipment;

(d) one appointed representative of the department of health and environmental sciences, who shall be a sanitary engineer and who is secretary of the board.

(3) The appointed members of the board shall serve for a term of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. 82A-1602.22 by Sec. 359, Ch. 350, L. 1974; Sec. 82A-1602.22, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.22; amd. Sec. 3, Ch. 549, L. 1979.

Compiler's Comments

Board reestablished. Sec. 1, Ch. 549, L. 1979, provided: "The board of plumbers created by 2-15-1655 is reestablished for a period of 6 years pursuant to 2-8-121."

Effective date. Sec. 7, Ch. 549, L. 1979, provided: "Sections 1 and 2 are effective on passage and approval." Approved April 12, 1979.

2-15-1656. Board of warm air heating, ventilation, and air conditioning. (1) There is a state board of warm air heating, ventilation, and air conditioning.

(2) The board consists of seven members appointed by the governor. The members are:

(a) two master and two journeyman mechanics, who shall be 18 years of age or older and residents of Montana for at least 1 year. Each mechanic shall have been licensed pursuant to Title 37, chapter 70, at least 2 years immediately preceding his appointment.

(b) one representative of the department of administration responsible for the administration of parts 1 through 4 of Title 50, chapter 60, who shall act as secretary;

(c) one attorney from the department; and

(d) one representative of the fire marshal bureau.

(3) Each member shall serve for a period of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. 82A-1602.29 by Sec. 1, Ch. 504, L. 1975; R.C.M. 1947, 82A-1602.29(part); amd. Sec. 19, Ch. 184, L. 1979.

2-15-1657 through 2-15-1660 reserved.

2-15-1661. Board of athletics. (1) There is a board of athletics.

(2) The board consists of three members appointed by the governor.

(3) Each member shall serve for a term of 3 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. 82A-1602.4 by Sec. 355, Ch. 350, L. 1974; Sec. 82A-1602.4, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.4.

2-15-1662. Board of horseracing. (1) There is a board of horseracing.

(2) The board consists of five members appointed by the governor with the consent of the senate, who shall be citizens, residents, and qualified electors of this state. At least one member shall be a breeder of racing horses, one member shall be a member of an independent horseracing association, one member shall be a member of a county fair board that conducts a fair featuring parimutuel betting, and two members shall have occupations unrelated to horseracing.

(3) The governor shall not appoint any member who resides in the same county as a current member. The governor shall appoint members on the basis of experience, qualifications, and a reasonable geographical balance throughout the state.

(4) Each member shall serve for a term of 3 years. A member may be removed from office by the governor only for cause.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (4)En. Sec. 1, Ch. 196, L. 1965; amd. Sec. 1, Ch. 457, L. 1973; Sec. 62-501, R.C.M. 1947; redes. 82A-1602.13 by Sec. 12, Ch. 350, L. 1974; Sec. 82A-1602.13, R.C.M. 1947; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.13.

Part 17

Department of Labor and Industry

2-15-1701. Department of labor and industry — head. (1) There is a department of labor and industry. As prescribed in Article XII, section 2, of the Montana constitution, the department head is the commissioner of labor and industry.

(2) He shall be appointed by the governor, subject to the confirmation of the senate. The term of office of the commissioner shall be 4 years and until his successor is appointed and qualified.

(3) The commissioner shall receive an annual salary in such amount as may be specified by the legislature in the appropriation to the department of labor and industry.

(4) Before entering on the duties of his office, he must take and subscribe to the oath of office prescribed by the Montana constitution.

History: (1)En. 82A-1001 by Sec. 1, Ch. 272, L. 1971; Sec. 82A-1001, R.C.M. 1947; (2) thru (4)Ap. p. Sec. 2, Ch. 177, L. 1951; Sec. 41-1602, R.C.M. 1947; Ap. p. Sec. 3, Ch. 177, L. 1951; amd. Sec. 1, Ch. 27, L. 1957; amd. Sec. 2, Ch. 225, L. 1963; amd. Sec. 20, Ch. 177, L. 1965; amd. Sec. 2, Ch. 237, L. 1967; amd. Sec. 19, Ch. 100, L. 1973; amd. Sec. 6, Ch. 343, L. 1977; Sec. 41-1603, R.C.M. 1947; R.C.M. 1947, 41-1602, 41-1603, 82A-1001(part); amd. Sec. 20, Ch. 184, L. 1979.

2-15-1702. Division of workers' compensation — head. (1) There is a division of workers' compensation within the department. The division head is an administrator appointed by the governor as are directors in accordance with 2-15-111.

(2) The division is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the division may hire its own personnel, and 2-15-121(2)(d) does not apply.

History: En. 82A-1004 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 87, Ch. 23, L. 1975; R.C.M. 1947, 82A-1004(part).

2-15-1703. Division of employment security — head — bureaus. (1) There is a division of employment security within the department. The division head is an administrator appointed by the commissioner of labor and industry.

(2) Within the division of employment security are the following bureaus:

(a) the bureau of Montana state employment service;

(b) the bureau of unemployment insurance.

(3) Each bureau shall be headed by a full-time chief appointed by the administrator.

(4) The administrator shall establish such other bureaus within the division as are required for the receipt of federal funds. Personnel of the division shall be employed in accordance with merit system standards.

History: En. 82A-1006 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1006.

2-15-1704. Board of labor appeals — allocation — composition — function — quasi-judicial. (1) There is a board of labor appeals.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The board is composed of three members of the public who are not employees of the state government, appointed by the governor as prescribed in 2-15-124.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

History: En. 82A-1008 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1008(1) thru (3), (5).

2-15-1705. Board of personnel appeals — allocation — composition — quasi-judicial. (1) There is a board of personnel appeals.

(2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(3) The board consists of five members appointed by the governor. Two members shall represent management, two members shall represent employees or employee organizations of the state, and one member shall represent a neutral position.

(4) The board is designated a quasi-judicial board for purposes of 2-15-124.

History: En. 82A-1014 by Sec. 15, Ch. 440, L. 1973; amd. Sec. 1, Ch. 47, L. 1974; amd. Sec. 1, Ch. 378, L. 1975; amd. Sec. 1, Ch. 545, L. 1977; R.C.M. 1947, 82A-1014(1) thru (3), (5).

2-15-1706. Commission for human rights — allocation — quasi-judicial. (1) There is a commission for human rights.

(2) The commission consists of five members appointed by the governor.

(3) The commission is designated as a quasi-judicial board for the purposes of 2-15-124.

(4) The commission is allocated to the department of labor and industry for administrative purposes only as provided in 2-15-121, except that the commission may hire its own personnel, may seek and receive private and federal funds in its own name, and may determine all matters of policy concerning the use of its budget. Subsection (2)(d) of 2-15-121 shall not apply for purposes of this section.

History: En. 82A-1015 by Sec. 4, Ch. 283, L. 1974; amd. Sec. 1, Ch. 478, L. 1975; R.C.M. 1947, 82A-1015.

Part 18

Department of Business Regulation

2-15-1801. Department of business regulation — head. There is a department of business regulation. The department head is a director of business regulation appointed by the governor in accordance with 2-15-111.

History: En. 82A-401 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 141, Ch. 431, L. 1975; R.C.M. 1947, 82A-401.

2-15-1802. Board of milk control — membership — allocation — quasi-judicial. (1) There is a board of milk control.

(2) The board consists of five members. A member may not be connected in any way with the production, processing, distribution, or wholesale or retail sale of milk or dairy products. A member may not have held an elective or appointive public office during the 2 years immediately preceding his appointment, and a member may not hold a public office, either elective or appointive, during his term on the board. Not more than three members may be of the same political party or residents of the same congressional district.

(3) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

History: En. 82A-406 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 143, Ch. 431, L. 1975; R.C.M. 1947, 82A-406.

2-15-1803. State banking board — composition — allocation. (1) There is a state banking board.

(2) The board is composed of seven members, including the director of business regulation who is the chairman of the board. The remaining six members of the board shall be appointed with consideration given banks of small, medium, and large size and to geographical distribution. At least one banker member and one public member shall be appointed from each congressional district of the state. Two of the six members shall be active officers in state banks of Montana, one shall be an active officer of a national bank doing business in Montana, and three shall be members of the public, none of whom shall be an officer, director, or shareholder of any state or national bank.

(3) The members shall be appointed by the governor with the consent of the senate for terms of 3 years. Vacancies shall be filled by appointment for the unexpired term. No member other than the director of business regulation may serve more than two consecutive terms.

(4) The board is allocated to the department for administrative purposes only as provided in 2-15-121.

History: En. Sec. 1, Ch. 420, L. 1973; Sec. 5-607, R.C.M. 1947; amd. and redes. 82A-407 by Sec. 21, Ch. 431, L. 1975; R.C.M. 1947, 82A-407; amd. Sec. 3, Ch. 321, L. 1979.

Compiler's Comments

Board reestablished. Sec. 1, Ch. 321, L. 1979, provided: "The state banking board is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules."

Effective date. Sec. 4, Ch. 321, L. 1979, provided: "This act is effective on passage and approval." Approved March 26, 1979.

2-15-1804. Proprietary postsecondary educational advisory council. (1) There is created a proprietary postsecondary educational advisory council.

(2) The council is composed of five members appointed by the governor and two ex officio members. Two members shall represent the Montana proprietary school association, one member shall represent the advisory council for vocational education, one member shall represent the Montana personnel and guidance association, and one member from the public at large who has no connection with education. The ex officio members shall be the superintendent of public instruction and the commissioner of higher education.

(3) Members of the council shall serve for 5 years.

History: En. 75-9205 by Sec. 5, Ch. 296, L. 1974; R.C.M. 1947, 75-9205(part).

Part 19

Insurance and Investment

2-15-1901. Office of securities commissioner. There is an office of securities commissioner, and the state auditor of Montana is hereby made and constituted ex officio securities commissioner.

History: En. Sec. 1, Ch. 251, L. 1961; R.C.M. 1947, 15-2001; amd. Sec. 8, Ch. 351, L. 1979.

Compiler's Comments

Office reestablished. The preamble to HB 599 (Chapter 439, L. 1979) provided: "WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, will terminate the office of the investment (securities) commissioner in the state auditor's office and require a performance evaluation of the office of the investment commissioner by the legislative audit committee; and

WHEREAS, as a result of the performance evaluation, the legislative audit committee recommends that the office of the investment commissioner be reestablished under existing statutory authority."

Sec. 1, Ch. 439, L. 1979, provided: "The office of the investment (securities) commissioner in the state auditor's office is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules."

Effective date. Sec. 3, Ch. 439, L. 1979, provided: "This act is effective on passage and approval." Approved March 31, 1979.

Statement of intent. The statement of intent adopted with HB 599 (Ch. 439, L. 1979) provided: "A statement of intent is required for HB 599 in that it continues rulemaking authority for the state auditor as the ex officio investment (now securities) commissioner under present statutory authority.

1. House Bill 599 reestablishes the office of the investment (now securities) commissioner in the office of the state auditor under existing statutory authority. Section 30-10-107, MCA, sets forth the commissioner's present rulemaking authority. It is the intent of the Legislature to reaffirm the rulemaking authority of the commissioner as it is limited by 30-10-107. It is further intended that only those rules necessary to carry out statutory responsibilities relating to the regulation of the securities industry will be adopted by the commissioner."

Name change. Sec. 8, Ch. 351, L. 1979, provided: "Whenever the term "investment commissioner", relating to the investment commissioner, state auditor's office, created by 2-15-1901, appears in the MCA, it means "securities commissioner". The code commissioner is empowered and instructed to change all such references to "investment commissioner" to "securities commissioner"."

2-15-1902. Insurance department. (1) There is an insurance department of this state which shall be located in or convenient to the office occupied by the state auditor.

(2) The insurance department shall be under the control and supervision of the commissioner.

(3) Funds adequate for the maintenance and operation of the insurance department shall be expressly appropriated by the legislature and shall be used solely for the purposes for which so appropriated.

History: En. Sec. 21, Ch. 286, L. 1959; R.C.M. 1947, 40-2702.

Compiler's Comments

Office reestablished. Section 1, Ch. 655, L. 1979, provided: "The office of the commissioner of insurance and the insurance department in the state auditor's office is reestablished for 6 years pursuant to 2-8-122 with its existing statuory authority and rules."

Effective date. Section 3, Ch. 655, L. 1979, provided: "This act is effective on passage and approval." Approved May 7, 1979.

2-15-1903. Commissioner of insurance designated. The state auditor shall be ex officio the commissioner of insurance of this state.

History: En. Sec. 20, Ch. 286, L. 1959; R.C.M. 1947, 40-2701.

Compiler's Comments

Office reestablished. Section 1, Ch. 655, L. 1979, provided: "The office of the commissioner of insurance and the insurance department in the state auditor's office is reestablished for 6 years pursuant to 2-8-122 with its existing statuory authority and rules."

Effective date. Section 3, Ch. 655, L. 1979, provided: "This act is effective on passage and approval." Approved May 7, 1979.

Part 20

Department of Justice

2-15-2001. Department of justice — head. There is a department of justice. The department head is the attorney general.

History: En. 82A-1201 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 6, Ch. 250, L. 1973; R.C.M. 1947, 82A-1201.

2-15-2002. Division of motor vehicles. There is a division of motor vehicles within the department.

History: En. 82A-1204 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1204.

2-15-2003. Bureau of criminal investigation. There is a permanent bureau of criminal investigation within the office of the attorney general.

History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 82-414(1).

2-15-2004. Division of forensic science — head. (1) There is a division of forensic science in the department of justice.

(2) The division head is an administrator whose title is state medical examiner and who shall be appointed by the director of the department. He shall be a forensic pathologist qualified or certified by the American board of pathology.

History: En. 82-429 by Sec. 3, Ch. 530, L. 1977; R.C.M. 1947, 82-429; amd. Sec. 21, Ch. 184, L. 1979.

2-15-2005. Fire marshal bureau — advisory council. (1) There is a fire marshal bureau in the department of justice which is under the supervision and control of the attorney general.

(2) The chief of the fire marshal bureau shall be appointed by the attorney general and shall serve at his pleasure. The chief of the fire marshal bureau is the state fire marshal.

(3) A person appointed state fire marshal shall have:

(a) at least 10 years of progressively responsible experience in fire protection;

(b) a 2-year associate degree in fire protection engineering from a recognized institution of higher education and 2 years' experience in fire protection; or

(c) a degree from a recognized institution of higher education in fire protection engineering or fire protection technology.

(4) The attorney general shall create a fire marshal advisory council in accordance with procedures provided in 2-15-122.

History: En. Sec. 1, Ch. 148, L. 1911; re-en. Sec. 2737, R.C.M. 1921; re-en. Sec. 2737, R.C.M. 1935; amd. Sec. 1, Ch. 229, L. 1967; amd. Sec. 33, Ch. 187, L. 1977; amd. Sec. 1, Ch. 519, L. 1977; R.C.M. 1947, 82-1201.

2-15-2006. Board of crime control — composition — allocation. (1) There is a board of crime control.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(3) The board is composed of 18 members appointed by the governor in accordance with 2-15-124 and any special requirements of Title I of the Omnibus Crime Control and Safe Streets Act, as amended. The board shall be representative of state and local law enforcement and criminal justice agencies, including agencies directly related to the prevention and control of juvenile delinquency, units of general local government, and public agencies maintaining programs to reduce and control crime and shall include representatives of citizens and professional and community organizations, including organizations directly related to delinquency prevention.

History: En. 82A-1207 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 61, L. 1973; amd. Sec. 1, Ch. 202, L. 1977; R.C.M. 1947, 82A-1207(1) thru (3); amd. Sec. 22, Ch. 184, L. 1979.

2-15-2007 through 2-15-2010 reserved.

2-15-2011. Distribution of fire code. (1) Within 90 days after July 1, 1977, the department of justice shall compile, index, and publish all Montana statutes relating to fire protection in the form of a pamphlet to be entitled "Fire Codes of Montana". The pamphlet shall be revised and republished within 90 days after the close of any regular legislative session in which an act relating to fire protection is adopted.

(2) Upon completion, a copy of the pamphlet, as amended, shall be mailed to each fire and sheriff department within Montana without charge. The department of justice shall make copies of the pamphlet and subsequent revisions available to the public.

History: En. 82-425, 82-426 by Secs. 1, 2, Ch. 522, L. 1977; R.C.M. 1947, 82-425, 82-426.

Part 21

Department of Health and Environmental Sciences

2-15-2101. Department of health and environmental sciences — head. There is a department of health and environmental sciences. The department head is the director of health and environmental sciences appointed by the governor in accordance with 2-15-111 and in addition shall have the qualifications required in 2-15-2102.

History: En. 82A-601 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 95, Ch. 349, L. 1974; amd. Sec. 1, Ch. 326, L. 1977; R.C.M. 1947, 82A-601.

2-15-2102. Director of health and environmental sciences — qualifications. The director of health and environmental sciences shall:

(1) have a degree of doctor of medicine;

(2) be eligible for a license by the board of medical examiners;

(3) receive a license from the board of medical examiners not later than 6 months after his appointment.

History: En. 82A-608 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 100, Ch. 349, L. 1974; amd. Sec. 2, Ch. 326, L. 1977; R.C.M. 1947, 82A-608.

2-15-2103. Division of environmental sciences — functions. There is a division of environmental sciences within the department. The department shall assign all functions performed by the department relating to air pollution control, water pollution control, radiation control, pesticides control, environmental sanitation, solid waste disposal, industrial hygiene, and related areas to the division.

History: En. 82A-604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 97, Ch. 349, L. 1974; R.C.M. 1947, 82A-604.

2-15-2104. Board of health and environmental sciences — membership — quasi-judicial. (1) There is a board of health and environmental sciences.

(2) The board consists of seven members appointed by the governor as follows:

(a) at least two members having professional qualifications in a human health service licensed by a board within a department of professional and occupational licenses;

(b) at least one member being a doctor of veterinary medicine licensed in this state who is engaged in food animal medicine; and

(c) the other members not holding such qualifications shall have demonstrated intelligent and active interest in the field of public health.

(3) The board is designated as a quasi-judicial board for purposes of 2-15-124.

History: En. 82A-605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 322, L. 1975; amd. Sec. 1, Ch. 524, L. 1977; R.C.M. 1947, 82A-605.

2-15-2105. Board of water and wastewater operators. (1) There is a board of water and wastewater operators.

(2) The board consists of seven members. Except as provided in subsection (2)(e) of this section, the members shall be appointed by the governor. The members are:

(a) two members who are employed water supply system or water treatment plant operators holding valid certificates. One of these members shall hold a certificate by examination of the highest class issued by the department of health and environmental sciences. There is no restriction on the classification of the certificate held by the other operator.

(b) two members who are employed wastewater treatment plant operators holding valid certificates. One of these members shall hold a certificate by examination of the highest class issued by the department of health and environmental sciences. There is no restriction on the classification of the certificate held by the other operator.

(c) one member serving on the faculty of a university or college whose major field is related to water supply systems, wastewater treatment, chemical or civil engineering, chemistry, or bacteriology;

(d) one member who is a representative of a municipality required to employ a certified operator and who holds a position of either city manager, city engineer, director of public works, works manager, or their equivalent;

(e) the administrator of the division of environmental sciences of the department of health and environmental sciences or a qualified member of his staff appointed by the administrator.

(3) Members, except the ex officio voting member from the department of health and environmental sciences, shall serve for a term of 6 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. 82A-612 by Sec. 101, Ch. 349, L. 1974; R.C.M. 1947, 82A-612.

2-15-2106. Air pollution control advisory council. (1) There is an air pollution control advisory council.

(2) The council consists of 10 members appointed by the governor, with the consent of the senate, as follows:

(a) a representative of labor;

(b) a representative of agriculture;

(c) a representative of the manufacturing industry;

(d) a representative of the fuel industry;

(e) a practicing physician licensed in this state;

(f) a practicing veterinarian licensed in this state;

(g) a practicing registered professional chemical or environmental engineer;

(h) a meteorologist;

(i) a conservationist; and

(j) an urban planning consultant.

(3) The appointed members shall serve at the pleasure of the governor.

(4) Subsections (5) through (8) of 2-15-122 apply to the council and members.

History: **En. 82A-606 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 98, Ch. 349, L. 1974; R.C.M. 1947, 82A-606.**

2-15-2107. Water pollution control advisory council. (1) There is a water pollution control advisory council.

(2) The council consists of eleven members. The members are:

(a) the director of fish, wildlife, and parks;

(b) the administrator of the water resources division of the department of natural resources and conservation;

(c) the director of agriculture;

(d) eight members appointed by the governor as follows:

(i) a representative of industry concerned with the disposal of inorganic waste;

(ii) a representative of industry concerned with the disposal of organic waste;

(iii) a livestock feeder;

(iv) a representative of municipal government;

(v) a representative of an organization concerned with fishing for sport;

(vi) a representative from labor;

(vii) a supervisor of a soil and water conservation district;

(viii) a representative of an organization concerned with water recreation.

(3) The appointed council members serve at the pleasure of the governor.

(4) Subsections (5) through (8) of 2-15-122 apply to the council and members.

History: **En. 82A-607 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 99, Ch. 349, L. 1974; R.C.M. 1947, 82A-607; amd. Sec. 2, Ch. 218, L. 1979.**

Part 22

Department of Social and Rehabilitation Services

2-15-2201. Department of social and rehabilitation services — head. There is a department of social and rehabilitation services. The department head is a director of social and rehabilitation services appointed by the governor in accordance with 2-15-111.

History: **En. 82A-1901 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1901.**

2-15-2202. Board of veterans' affairs. (1) There is a board of veterans' affairs.

(2) The board consists of five members appointed by the governor. Not more than one member shall be appointed from a single county. However, a change of residence within the state after appointment does not alter a member's status. All members shall be residents of this state and shall have been honorably discharged from service in the military forces of the United States in any of its wars. A vacancy occurring on the board shall be filled by the governor, subject to the conditions of this subsection.

(3) Each member shall serve for a term of 5 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

History: **En. 82A-1905 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 46, Ch. 121, L. 1974; R.C.M. 1947, 82A-1905.**

2-15-2203. Board of social and rehabilitation appeals — allocation — quasi-judicial. (1) There is a board of social and rehabilitation appeals.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The board consists of three members appointed by the governor as prescribed in 2-15-124 as follows:

(a) the director of the department, who shall act as chairman of the board. The director does not have a term on the board as a board member but shall serve at the pleasure of the governor.

(b) two members of the general public.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124. For purposes of that section, a majority shall be considered as one.

History: **En. 82A-1906 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1906.**

2-15-2204. Developmental disabilities planning and advisory council. (1) The governor shall appoint a developmental disabilities planning and advisory council in accordance with the provisions of this section.

(2) The council is composed of 22 members and consists of the following:

(a) the directors of the departments of social and rehabilitation services, health and environmental sciences, and institutions or their designees;

(b) the superintendent of public instruction or a designee;

(c) one recognized private professional in each discipline of medicine, law, psychology, social work, and special education;

(d) two members of the state senate;

(e) two members of the state house of representatives;

(f) four consumers or representatives of consumers or consumer organizations in the discipline of developmental disabilities; and

(g) one member of each of the five regional councils provided for in 53-20-207, who shall also be consumers or representatives of consumers or consumer organizations in the discipline of developmental disabilities.

(3) (a) Each member or his designee who serves on the council pursuant to subsection (2)(a) or (2)(b) of this section shall serve for a term concurrent with his respective term as a director or the superintendent of public instruction, as the case may be. Upon his removal from office, his or his designee's term as a member of the council is automatically terminated and his successor in office or his successor's designee is automatically a member of the council.

(b) Each member who serves on the council pursuant to subsection (2)(d) or (2)(e) of this section shall be appointed or reappointed annually by the governor.

(c) Eight of the members serving on the council pursuant to subsection (2)(c), (2)(f), or (2)(g) of this section shall be appointed by the governor to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining six members serving on the council shall be appointed by the governor to serve for terms ending on January 1 of the third year of the succeeding gubernatorial term and until their successors are appointed.

(4) The council is allocated to the department for administrative purposes only and, unless inconsistent with the provisions of this section and 53-20-206, the provisions of 2-15-121 apply.

History: En. 71-2406 by Sec. 5, Ch. 239, L. 1975; amd. Sec. 4, Ch. 559, L. 1977; R.C.M. 1947, 71-2406(1) thru (3), (10).

2-15-2205. Division of visual services. There is a division of visual services within the department of social and rehabilitation services. The division head is an administrator appointed by the director of the department of social and rehabilitation services in accordance with merit system and classification requirements. The division is responsible for administration of rehabilitative and other services for blind and visually handicapped persons.

History: En. Sec. 1, Ch. 523, L. 1979.

Compiler's Comments

Codification. Sec. 4, Ch. 523, L. 1979, provided: "It is intended that section 1 be codified as an integral part of Title 2, chapter 15, part 22, and the provisions of Title 2, chapter 15, part 22, shall apply to section 1."

Part 23

Department of Institutions

2-15-2301. Department of institutions — head. There is a department of institutions. The department head is a director of institutions appointed by the governor in accordance with 2-15-111.

History: En. 82A-801 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-801.

2-15-2302. Board of pardons — composition — allocation — quasi-judicial. (1) There is a board of pardons.

(2) The board consists of three members and an auxiliary member, at least one of whom shall have particular knowledge of Indian culture and problems. Members of the board, including the auxiliary member, shall possess academic training which has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.

(3) The auxiliary member shall attend any meeting that a regular board member is unable to attend, and at that time the auxiliary member has all the rights and responsibilities of a regular board member.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(5) The board, including the auxiliary member, is designated as a quasi-judicial board for purposes of 2-15-124, except board members shall be compensated as provided by legislative appropriation.

History: En. 82A-804 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 78, Ch. 120, L. 1974; amd. Sec. 1, Ch. 333, L. 1975; R.C.M. 1947, 82A-804; amd. Sec. 1, Ch. 574, L. 1979.

Compiler's Comments

Effective date. Sec. 2, Ch. 574, L. 1979, provided: "This act is effective upon passage and approval." Approved April 12, 1979.

2-15-2303. Repealed. Sec. 3, Ch. 495, L. 1979.

2-15-2304. Board of eugenics — composition — qualifications — allocation — quasi-judicial. (1) There is a board of eugenics.

(2) The board consists of seven members and one ex officio member. The members are:

(a) two physicians licensed to practice medicine and surgery in this state to be appointed after considering the recommendation of the Montana medical association;

(b) one lawyer licensed to practice law in this state to be appointed after considering the recommendation of the state bar of Montana;

(c) three lay members;

(d) one psychologist;

(e) the director of institutions, who is an ex officio member of the board.

(3) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

History: En. 82A-805 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 79, Ch. 120, L. 1974; R.C.M. 1947, 82A-805.

Part 24 reserved

Part 25

Department of Highways

2-15-2501. Department of highways — head. There is a department of highways. The department head is a director of highways appointed by the governor in accordance with 2-15-111.

History: En. 82A-701 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 204, Ch. 316, L. 1974; R.C.M. 1947, 82A-701.

2-15-2502. Highway commission. (1) The highway commission consists of five members. One member shall be a bona fide resident of and appointed from each of these districts, each composed of the counties named:

(a) District 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Lewis and Clark, Jefferson, Broadwater;

(b) District 2. Powell, Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, Wheatland, Park, Sweet Grass;

(c) District 3. Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, Judith Basin;

(d) District 4. Fergus, Petroleum, Garfield, Phillips, Valley, McCone, Prairie, Dawson, Wibaux, Richland, Roosevelt, Daniels, Sheridan;

(e) District 5. Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, Rosebud, Treasure, Custer, Powder River, Carter, Fallon.

(2) No two members may at the time of appointment or thereafter during their respective terms of office be residents of the same district.

(3) Not more than three members may at the time of appointment or thereafter during their respective terms be members of the same political party.

(4) No elective state official or state officer during the term of office to which he was elected or appointed and no state employee may be a member of the commission.

(5) No resolution, motion, or other decision of the commission may be adopted or passed without the favorable vote of at least three members.

(6) The commission is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(7) The commission is designated as a quasi-judicial board for purposes of 2-15-124; however, the provision of 2-15-124(1) that at least one member of a quasi-judicial board be an attorney does not apply to the commission.

History: En. Sec. 4-102, Ch. 197, L. 1965; Sec. 32-2402, R.C.M. 1947; amd. and redes. 82A-706.1 by Sec. 72, Ch. 316, L. 1974; amd. Sec. 2, Ch. 186, L. 1977; R.C.M. 1947, 82A-706.1.

Part 26

Department of Public Service Regulation

2-15-2601. Department of public service regulation — head. There is a department of public service regulation. The department head is the public service commission provided for in 2-15-2602.

History: En. 82A-1701 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1701.

2-15-2602. Public service commission — composition. (1) There is a public service commission as provided in Title 69, chapter 1, part 1.

(2) The composition, method of selection, and terms of office of members of the commission are as prescribed in Title 69, chapter 1, part 1.

History: En. 82A-1702 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1702(part).

Parts 27 through 29 reserved

Part 30

Department of Agriculture

2-15-3001. Department of agriculture — head. There is a department of agriculture. The department head is a director of agriculture appointed by the governor in accordance with 2-15-111.

History: En. 82A-301 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 141, Ch. 218, L. 1974; R.C.M. 1947, 82A-301.

2-15-3002. Montana wheat research and marketing committee — composition — allocation. (1) There is a Montana wheat research and marketing committee.

(2) The committee consists of seven members and three ex officio, nonvoting members.

(3) The governor shall appoint one member from each of the following districts:

(a) District I, consisting of Daniels, Sheridan, and Roosevelt Counties;

(b) District II, consisting of Valley, Phillips, Blaine, and Hill Counties;

(c) District III, consisting of Liberty, Toole, Glacier, and Pondera Counties;

(d) District IV, consisting of Chouteau and Teton Counties;

(e) District V, consisting of Lewis and Clark, Cascade, Judith Basin, Fergus, Petroleum, Meagher, Broadwater, Wheatland, Golden Valley, and Musselshell Counties;

(f) District VI, consisting of Big Horn, Yellowstone, Stillwater, Carbon, Sweet Grass, Park, Gallatin, Madison, Jefferson, Silver Bow, Beaverhead, and all counties west of the continental divide;

(g) District VII, consisting of Garfield, McCone, Rosebud, Richland, Dawson, Wibaux, Prairie, Carter, Custer, Fallon, Powder River, and Treasure Counties.

(4) The ex officio members are:

(a) the director of the department of agriculture;

(b) the dean of agriculture of Montana state university;

(c) a representative of the grain trade in Montana elected by a majority of the appointed members.

(5) Each of the appointed members shall be a citizen of Montana, derive a substantial portion of his income from growing wheat or barley in this state, and be a resident of and have farming operations in the district from which appointed. No more than four of the appointed members may be of the same political party.

(6) A list of nominees for appointment may be submitted to the governor by the Montana farmers union, Montana farm bureau, Montana grange, and the Montana grain growers association. Names of nominees shall be submitted within 91 days before the expiration of a committeeman's term.

(7) The appointed members shall serve staggered terms of 5 years. The ex officio representative of the grain trade shall serve at the pleasure of the committee.

(8) A member may be removed by the governor, after a full public hearing before the governor, for malfeasance, misfeasance, or neglect of duty. Removal proceedings may not be started except upon duly verified written charges. The member shall be given a copy of the written charges at least 10 days in advance of the hearing. At the hearing, the member may be represented by an attorney and may present witnesses in his behalf.

(9) A member who ceases to reside in the state or in the district from which he was appointed or who ceases to grow wheat or barley in the state or district is disqualified from membership and his office becomes vacant. If the member refuses to recognize his disqualification, the refusal is cause for removal.

(10) The committee is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. 82A-304 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 143, Ch. 218, L. 1974; amd. Sec. 8, Ch. 71, L. 1975; R.C.M. 1947, 82A-304.

2-15-3003. Board of hail insurance. (1) There is a board of hail insurance of five members consisting of the state auditor, the director of agriculture, who is secretary of the board, and three other members to be appointed by the governor from names submitted by farmer organizations having a general membership throughout the state.

(2) The governor shall designate one of the appointive members to act as chairman of the board.

(3) Whenever the term of any member expires, either by death, resignation, removal for cause, or expiration of his term of office, the governor shall appoint his successor and shall also appoint one of the board for chairman in case of a vacancy in that office.

(4) Each appointive member of the board shall be appointed for 3 years, except when such appointment is made to fill a vacancy on the board, in which event such appointee shall fill out the unexpired term of the member whose place he fills.

(5) All members of the board shall be subject to removal for cause by the governor.

(6) The board is allocated to the department of agriculture for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (5)En. Sec. 1, Ch. 169, L. 1917; amd. Sec. 1, Ch. 17, Ex. L. 1918; amd. Sec. 1, Ch. 141, L. 1921; re-en. Sec. 350, R.C.M. 1921; amd. Sec. 1, Ch. 40, L. 1923; re-en. Sec. 350, R.C.M. 1935; amd. Sec. 58, Ch. 391, L. 1973; amd. Sec. 140, Ch. 218, L. 1974; amd. Sec. 2, Ch. 468, L. 1977; Sec. 82-1501, R.C.M. 1947; (6)En. Sec. 1, Ch. 395, L. 1973; Sec. 82A-304.1, R.C.M. 1947; R.C.M. 1947, 82-1501(part), 82A-304.1; amd. Sec. 23, Ch. 184, L. 1979.

Part 31

Department of Livestock

2-15-3101. Department of livestock — head. There is a department of livestock. The department head is the board of livestock provided for in 2-15-3102.

History: En. 82A-1301 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1301.

2-15-3102. Board of livestock — composition. (1) There is a board of livestock.

(2) The board consists of seven members appointed by the governor with the consent of the senate. Each member shall be a resident of the state and an active livestock producer. A member shall be appointed upon the recommendation of the related industry and shall have the following qualifications:

(a) two are cattle producers, one from each congressional district within the state;

(b) two are cattle producers at large;

(c) one is a dairy producer representing the dairy and poultry industry;

(d) one is a swine producer; and

(e) one is a sheep producer.

(3) An appointee is vested with all the powers and duties of his office before being confirmed by the senate, as are directors in 2-15-111(2).

(4) The governor shall designate the chairman of the board.

(5) A member shall serve for a term of 6 years.

(6) Members of the board shall be reimbursed and compensated as are members of quasi-judicial boards in 2-15-124(7).

History: **En. 82A-1303 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 198, Ch. 310, L. 1974; amd. Sec. 1, Ch. 393, L. 1975; R.C.M. 1947, 82A-1303.**

2-15-3103. Montana pork research and marketing committee. (1) The governor shall appoint a committee to be known as the Montana pork research and marketing committee, which committee shall be composed of:

(a) five members, each of whom is a citizen of Montana and each of whom derives a substantial portion of his income from producing swine in Montana;

(b) four ex officio members (who may not vote on any decisions, orders, or regulations of the committee):

(i) the commissioner of the department of agriculture;

(ii) the dean of agriculture of Montana state university;

(iii) administrator of brand enforcement, livestock department;

(iv) administrator of animal health, livestock department.

(2) One member of the committee shall be appointed from each of the following districts and shall be a resident of and shall have swine operations in the district from which appointed:

(a) District I, consisting of Deer Lodge, Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Powell, Ravalli, Sanders, Glacier, Liberty, Pondera, Teton, Toole, Broadwater, Cascade, Lewis and Clark, Meagher, Beaverhead, Gallatin, Jefferson, Madison, and Silver Bow Counties;

(b) District II, consisting of Blaine, Chouteau, Hill, Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, Wheatland, Big Horn, Carbon, Park, Stillwater, Sweet Grass, and Yellowstone Counties;

(c) District III, consisting of Daniels, Dawson, Garfield, McCone, Richland, Roosevelt, Sheridan, Valley, Treasure, Carter, Custer, Fallon, Powder River, Prairie, Rosebud, Wibaux, and Phillips Counties.

(3) Two members of the committee shall be appointed at large.

(4) A list of nominees for appointment to the committee may be submitted to the governor by any farm or ranch organization which has substantial numbers of its membership actively engaged in swine production. Each nominee must be from the district for which the appointment shall be made except for the at-large nominees. The names of nominees shall be submitted not less than 91 days prior to the expiration of any committee member's term.

(5) Committee members shall be appointed for a term of 5 years.

(6) Members appointed to fill unexpired terms shall be appointed for the remainder of the unexpired term.

(7) The committee is allocated to the department of livestock for administrative purposes only as provided in 2-15-121.

History: **En. 82A-1306 by Sec. 3, Ch. 484, L. 1975; R.C.M. 1947, 82A-1306(part).**

Part 32

Department of State Lands

2-15-3201. Department of state lands — head. There is a department of state lands. The department head is the board of land commissioners, provided for in Article X, section 4, of the constitution of this state.

History: En. 82A-1101 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 113, Ch. 428, L. 1973; R.C.M. 1947, 82A-1101.

2-15-3202. Commissioner of state lands. (1) There is a commissioner of state lands.

(2) The commissioner is the chief administrative officer of the department and, under the direction of the board of land commissioners, he is responsible for the administration of the functions vested in the department. He shall also perform those functions that are delegated to him by the board.

(3) The commissioner shall be appointed and serve as provided for directors in 2-15-111.

History: En. 82A-1104 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 115, Ch. 428, L. 1973; R.C.M. 1947, 82A-1104.

Part 33

Department of Natural Resources and Conservation

2-15-3301. Department of natural resources and conservation — head. There is a department of natural resources and conservation. The department head is the director of natural resources and conservation appointed by the governor in accordance with 2-15-111.

History: En. 82A-1501 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 114, Ch. 253, L. 1974; R.C.M. 1947, 82A-1501.

2-15-3302. Board of natural resources and conservation — composition — quasi-judicial. (1) There is a board of natural resources and conservation.

(2) The board is composed of seven members, appointed by the governor as prescribed in 2-15-124, informed and experienced in the subjects of natural resources and conservation.

(3) The board is designated as a quasi-judicial board for purposes of 2-15-124.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(5) In addition to carrying out its functions as provided by law, the board shall act in an advisory capacity to the department in all other matters.

History: En. 82A-1509 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 384, L. 1973; amd. Sec. 117, Ch. 253, L. 1974; R.C.M. 1947, 82A-1509.

2-15-3303. Board of oil and gas conservation — composition — allocation — quasi-judicial. (1) There is a board of oil and gas conservation.

(2) The board consists of seven members, three of whom shall be from the oil and gas industry and have had at least 3 years' experience in the production of oil and gas and two of whom shall be landowners residing in oil

or gas producing counties of the state but not actively associated with the oil and gas industry, but one of the two landowners shall be one who owns the mineral rights with the surface and the other shall be one who does not own the mineral rights.

(3) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply. The board may also prescribe the duties and annual salary of four professional staff positions.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

History: **En. 82A-1508 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 116, Ch. 253, L. 1974; R.C.M. 1947, 82A-1508; amd. Sec. 1, Ch. 412, L. 1979; amd. Sec. 1, Ch. 679, L. 1979.**

2-15-3304. State coordinator for rangeland resources. The department shall maintain and staff the office of state coordinator for the rangeland resources act.

History: **En. 76-304 by Sec. 4, Ch. 408, L. 1977; R.C.M. 1947, 76-304(1).**

2-15-3305. Rangeland resources committee. (1) The governor may select a committee in accordance with subsection (2) which is composed as follows:

(a) a chairman who is a rancher;
(b) a vice-chairman who is a rancher;
(c) a rancher from the eastern area of the state;
(d) a rancher from the northern area of the state;
(e) a rancher from the area of the state west of the continental divide;
(f) a rancher from the southern area of the state;
(g) a representative from each of the following agencies:
(i) Soil conservation service;
(ii) United States forest service;
(iii) Montana state university;
(iv) Farmers home administration;
(v) Montana stockgrowers association;
(vi) Office of economic development division;
(vii) School of forestry of the university of Montana;
(viii) Department of fish, wildlife, and parks;
(ix) Bureau of land management;
(x) Montana wool growers association;
(xi) Department of natural resources and conservation;
(xii) Bureau of Indian affairs;
(xiii) Montana cattlemen's association;
(xiv) Department of state lands;
(xv) Society for range management;
(xvi) United States fish and wildlife service;
(xvii) United States agricultural and stabilization service.

(2) (a) The governor shall select the members described in subsections (1)(a) through (1)(f) from a list submitted by the executive committee of the association of conservation districts and the board of directors of the Montana association of state grazing districts.

(b) The governor shall select the members described in subsection (1)(g) from a list submitted by their respective agencies and/or organizations.

(3) The committee members shall serve without compensation.

(4) All persons appointed to the committee shall serve at the pleasure of the governor.

(5) The committee is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. 76-305, 76-306 by Secs. 5, 6, Ch. 408, L. 1977; R.C.M. 1947, 76-305, 76-306; amd. Sec. 24, Ch. 184, L. 1979; amd. Sec. 2, Ch. 218, L. 1979.

2-15-3306. Soil survey advisory council. (1) The director of the department of natural resources and conservation shall appoint a soil survey advisory council to assist and cooperate with the department in formulation and oversight of the plan for completing the soil survey and mapping program provided for in Title 76, chapter 11, part 2. The soil survey advisory council shall consist of representatives of local, state, and federal agencies and private organizations having needs for or who could contribute expertise for the soil surveys and the mapping program.

(2) The director of the department of natural resources and conservation shall serve as chairman of the soil survey advisory council.

(3) The soil survey advisory council shall meet at least once a year.

History: En. Sec. 4, Ch. 358, L. 1979.

Part 34

Department of Fish, Wildlife, and Parks

2-15-3401. Department of fish, wildlife, and parks — head. There is a department of fish, wildlife, and parks. The department head is the director of fish, wildlife, and parks appointed by the governor in accordance with 2-15-111. The director is the secretary of the commission.

History: En. 82A-2001 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 417, L. 1977; R.C.M. 1947, 82A-2001; amd. Secs. 1, 2, Ch. 218, L. 1979.

Compiler's Comments

Instructions to code commissioner. Sec. 2, Ch. 218, L. 1979, provided: "The code commissioner is authorized and instructed to change any references to the department of fish and game in the Montana Code Annotated to the department of fish, wildlife, and parks."

2-15-3402. Fish and game commission — composition — qualifications — quasi-judicial. (1) There is a fish and game commission.

(2) The commission consists of five members. At least one member shall be experienced in the breeding and management of domestic livestock. The governor shall appoint one member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux Counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie Counties.

(3) Appointments shall be made without regard to political affiliation and shall be made solely for the wise management of the fish, wildlife, and state parks, and other outdoor recreational resources of this state. A person may not be appointed to the commission unless he is informed or interested and experienced in the subject of wildlife, fish, and outdoor recreation and the requirements for the conservation and protection of fish, game, game birds, animals, and outdoor recreational resources.

(4) A vacancy occurring on the commission shall be filled by the governor in the same manner and from the district in which the vacancy occurs.

(5) The fish and game commission is designated as a quasi-judicial board for purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the commission.

History: En. 82A-2004 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 56, Ch. 511, L. 1973; amd. Sec. 2, Ch. 417, L. 1977; R.C.M. 1947, 82A-2004; amd. Sec. 1, Ch. 379, L. 1979.

Compiler's Comments

Severability. Sec. 6, Ch. 379, L. 1979, was a severability section.

2-15-3403. Montana outfitters' council. (1) There is a Montana outfitters' council.

(2) The council consists of seven members. Each member shall be a licensed outfitter and shall represent one of the seven fish and game administrative districts. A member shall be selected by the licensed outfitters residing in that district by election at an annual meeting of the outfitters to be held in the district headquarters at 1:00 p.m. on the second Friday of March. A majority vote of all the outfitters in attendance at the meeting shall determine the member from the district. At the election an alternate member shall also be elected to serve if the first elected member is unable to act.

(3) The members shall serve staggered 3-year terms and take office on the day they are elected.

(4) The council is allocated to the department.

(5) The council is not subject to the provisions of 2-15-122.

History: En. 82A-2005 by Sec. 57, Ch. 511, L. 1973; amd. Sec. 1, Ch. 63, L. 1974; R.C.M. 1947, 82A-2005.

CHAPTER 16

PUBLIC OFFICERS

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Part 2 — Accession to Office

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Part 3 — Deputies

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2-16-401. Salary commission meetings.
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2-16-521. Powers of acting governor.

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2-16-602. Definitions.
2-16-603. Officers subject to recall — grounds for recall.
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2-16-611. Method of removal cumulative.
2-16-612. Persons qualified to petition — penalty for false signatures.
2-16-613. Limitations on recall petitions.
2-16-614. Number of electors required for recall petition.
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2-16-616. Form of recall petition.
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2-16-619. Submission of circulation sheets — certification of signatures.
2-16-620. County clerk to verify signatures.
2-16-621. Notification to officer — statement of justification.
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2-16-632. Conduct of special elections.
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2-16-634. Expenses of election.
2-16-635. Officer to remain in office until results declared — filling of vacancy.

Part 1

General Provisions

2-16-101. Classification of public officers. (1) The public officers of this state are classified as follows:

(a) legislative;

(b) executive;

(c) judicial;

(d) ministerial officers and officers of the courts.

(2) This classification is not to be construed as defining the legal powers of either class.

(3) Executive officers are either:

(a) civil; or

(b) military.

History: (1), (2)En. Sec. 140, Pol. C. 1895; re-en. Sec. 49, Rev. C. 1907; re-en. Sec. 50, R.C.M. 1921; Cal. Pol. C. Sec. 220; re-en. Sec. 50, R.C.M. 1935; Sec. 59-101, R.C.M. 1947; (3)En. Sec. 330, Pol. C. 1895; re-en. Sec. 125, Rev. C. 1907; re-en. Sec. 109, R.C.M. 1921; Cal. Pol. C. Sec. 341; re-en. Sec. 109, R.C.M. 1935; Sec. 59-201, R.C.M. 1947; R.C.M. 1947, 59-101, 59-201.

2-16-102. Qualifications generally — age and citizenship. (1) Provisions respecting disqualifications for particular offices are contained in the constitution and in the provisions of the codes concerning the various offices.

(2) No person is eligible to hold civil office in this state who at the time of his election or appointment is not of the age of 18 years or older and a citizen of this state.

History: (1)En. Sec. 961, Pol. C. 1895; re-en. Sec. 343, Rev. C. 1907; re-en. Sec. 411, R.C.M. 1921; Cal. Pol. C. Sec. 842; re-en. Sec. 411, R.C.M. 1935; Sec. 59-302, R.C.M. 1947; (2)En. Sec. 960, Pol. C. 1895; re-en. Sec. 342, Rev. C. 1907; re-en. Sec. 410, R.C.M. 1921; Cal. Pol. C. Sec. 841; re-en. Sec. 410, R.C.M. 1935; amd. Sec. 14, Ch. 240, L. 1971; amd. Sec. 1, Ch. 9, L. 1973; amd. Sec. 21, Ch. 94, L. 1973; Sec. 59-301, R.C.M. 1947; R.C.M. 1947, 59-301, 59-302.

2-16-103 through 2-16-110 reserved.

2-16-111. Residence of officers. (1) The following officers must reside and keep their offices at the seat of government: the governor, secretary of state, state auditor, attorney general, superintendent of public instruction, justices of the supreme court, and clerk of the supreme court.

(2) Restrictions upon the residence of other officers are contained in the chapter or part relating to the respective officers.

History: (1)En. Sec. 970, Pol. C. 1895; re-en. Sec. 345, Rev. C. 1907; re-en. Sec. 413, R.C.M. 1921; Cal. Pol. C. Sec. 852; re-en. Sec. 413, R.C.M. 1935; amd. Sec. 3, Ch. 468, L. 1977; Sec. 59-304,

R.C.M. 1947; (2)En. Sec. 974, Pol. C. 1895; re-en. Sec. 349, Rev. C. 1907; re-en. Sec. 417, R.C.M. 1921; re-en. Sec. 417, R.C.M. 1935; Sec. 59-308, R.C.M. 1947; R.C.M. 1947, 59-304, 59-308.

2-16-112. Absence from the state. No officer mentioned in 2-16-111(1) and no officer appointed by the governor and confirmed by the senate must absent himself from the state for more than 60 consecutive days unless upon business of the state or with the consent of the legislature.

History: En. Sec. 971, Pol. C. 1895; re-en. Sec. 346, Rev. C. 1907; re-en. Sec. 414, R.C.M. 1921; Cal. Pol. C. Sec. 853; re-en. Sec. 414, R.C.M. 1935; R.C.M. 1947, 59-305.

2-16-113. Seals. (1) Each of the executive and state officers of the state must have a seal. Such seal must contain the same representations and motto as is found on the great seal and must be 2 inches in diameter, surrounded by the words "State of Montana" (giving the title of the office, "Secretary of State", etc.).

(2) An impression of the seal of executive and state officers must be filed in the office of the secretary of state.

History: En. Sec. 1131, Pol. C. 1895; re-en. Sec. 431, Rev. C. 1907; re-en. Sec. 527, R.C.M. 1921; re-en. Sec. 527, R.C.M. 1935; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 19-112.

2-16-114. Facsimile signatures and seals. (1) As used in this section, the following definitions apply:

(a) "Public security" means a bond, note, certificate of indebtedness, or other obligation for the payment of money issued by this state or by any of its departments, agencies, public bodies, or other instrumentalities or by any of its political subdivisions.

(b) "Instrument of payment" means a check, draft, warrant, or order for the payment, delivery, or transfer of funds.

(c) "Authorized officer" means any official of this state or any of its departments, agencies, public bodies, or other instrumentalities or any of its political subdivisions whose signature to a public security or instrument of payment is required or permitted.

(d) "Facsimile signature" means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

(2) Any authorized officer, after filing with the secretary of state or, in the case of officers of any city, town, county, school district, or other political subdivision, with the clerk of such subdivision, his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature:

(a) any public security, provided that at least one signature required or permitted to be placed thereon shall be manually subscribed, but no such manual subscription shall be required as to interest coupons attached to such security; and

(b) any instrument of payment.

(3) Upon compliance with this section by the authorized officer, his facsimile signature has the same legal effect as his manual signature.

(4) When the seal of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped, or

otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

(5) Any person who with intent to defraud uses on a public security or an instrument of payment a facsimile signature or any reproduction of it of any authorized officer or any facsimile seal or any reproduction of it of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions is guilty of a felony.

History: En. Secs. 1 thru 4, Ch. 260, L. 1959; R.C.M. 1947, 59-1301, 59-1302, 59-1303, 59-1304.

2-16-115. Signature of officer acting ex officio. When an officer discharges ex officio the duties of another office than that to which he is elected or appointed, his official signature and attestation, except as otherwise provided by law, must be in the name of the office the duties of which he discharges.

History: En. Sec. 1135, Pol. C. 1895; re-en. Sec. 437, Rev. C. 1907; re-en. Sec. 454, R.C.M. 1921; Cal. Pol. C. Sec. 1031; re-en. Sec. 454, R.C.M. 1935; R.C.M. 1947, 59-511.

2-16-116. Power to administer oaths. Every executive, state, and judicial officer may administer and certify oaths.

History: En. Sec. 1132, Pol. C. 1895; re-en. Sec. 434, Rev. C. 1907; re-en. Sec. 463, R.C.M. 1921; Cal. Pol. C. Sec. 1028; re-en. Sec. 463, R.C.M. 1935; R.C.M. 1947, 59-533.

2-16-117. Office hours. Unless otherwise provided by law, every officer must keep his office open for the transaction of business continuously from 8 a.m. until 5 p.m. each day except upon Saturdays and holidays. Every officer shall keep his office open at such other times as the accommodation of the public or the proper transaction of business requires, excepting the state treasurer, who in his discretion may, in the interest of the safekeeping of funds, securities, and records under his control, close his office during the period from 12 noon to 1 p.m. every day.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol. C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; R.C.M. 1947, 59-510(1)(part).

Part 2

Accession to Office

2-16-201. Manner of election of certain officers. The mode of election of the governor, lieutenant governor, secretary of state, state auditor, attorney general, and superintendent of public instruction is prescribed by the constitution.

History: En. Sec. 340, Pol. C. 1895; re-en. Sec. 128, Rev. C. 1907; re-en. Sec. 111, R.C.M. 1921; Cal. Pol. C. Sec. 348; re-en. Sec. 111, R.C.M. 1935; amd. Sec. 22, Ch. 100, L. 1973; R.C.M. 1947, 59-203.

2-16-202. Title contested — salary withheld. (1) When the title of the incumbent of any office in this state is contested by proceedings instituted in any court for that purpose, no warrant can thereafter be drawn or paid for any part of his salary until such proceedings have been finally determined.

(2) As soon as such proceedings are instituted, the clerk of the court in which they are pending must certify the facts to the officers whose duty it would otherwise be to draw such warrant or pay such salary.

History: En. Secs. 1040, 1041, Pol. C. 1895; re-en. Secs. 375, 376, Rev. C. 1907; re-en. Secs. 451, 452, R.C.M. 1921; Cal. Pol. C. Secs. 936, 937; re-en. Secs. 451, 452, R.C.M. 1935; R.C.M. 1947, 59-508, 59-509.

2-16-203. Manner of appointments. Every officer, the mode of whose appointment is not prescribed by the constitution or statutes, must be appointed by the governor by and with the advice and consent of the senate.

History: En. Sec. 990, Pol. C. 1895; re-en. Sec. 351, Rev. C. 1907; re-en. Sec. 419, R.C.M. 1921; Cal. Pol. C. Sec. 875; re-en. Sec. 419, R.C.M. 1935; R.C.M. 1947, 59-401.

2-16-204. Gubernatorial commissions. (1) The governor must commission:

(a) All officers elected by the people whose commissions are not otherwise provided for;

(b) All officers of the militia;

(c) All officers appointed by the governor or by the governor with consent of the senate;

(d) United States senators.

(2) The commissions of all officers commissioned by the governor must be issued in the name of the state and must be signed by the governor and attested by the secretary of state under the great seal.

History: En. Secs. 1002, 1003, Pol. C. 1895; re-en. Secs. 358, 359, Rev. C. 1907; re-en. Secs. 426, 427, R.C.M. 1921; Cal. Pol. C. Secs. 891, 892; re-en. Secs. 426, 427, R.C.M. 1935; R.C.M. 1947, 59-409, 59-410.

2-16-205. Other commissions. The commissions of all other officers, where no special provision is made by law, must be signed by the presiding officer of the body or by the person making the appointment.

History: En. Sec. 1004, Pol. C. 1895; re-en. Sec. 360, Rev. C. 1907; re-en. Sec. 428, R.C.M. 1921; Cal. Pol. C. Sec. 893; re-en. Sec. 428, R.C.M. 1935; R.C.M. 1947, 59-411.

2-16-206 through 2-16-210 reserved.

2-16-211. Oaths — form — before whom — when. (1) Members of the legislature and all officers, executive, ministerial, or judicial, must, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support, protect, and defend the constitution of the United States and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)."

(2) No other oath, declaration, or test must be required as a qualification for any office or public trust.

(3) Except when otherwise provided, the oath may be taken before any officer authorized to administer oaths.

History: (1), (2)En. Sec. 3, p. 90, L. 1876; re-en. Sec. 575, 5th Div. Rev. Stat. 1879; re-en. Sec. 1067, 5th Div. Comp. Stat. 1887; amd. Sec. 1010, Pol. C. 1895; re-en. Sec. 362, Rev. C. 1907; re-en. Sec. 430, R.C.M. 1921; Cal. Pol. C. Sec. 904; re-en. Sec. 430, R.C.M. 1935; amd. Sec. 4, Ch. 7, L. 1973; amd. Sec. 23, Ch. 100, L. 1973; Sec. 59-413, R.C.M. 1947; (3)En. Sec. 1013, Pol. C. 1895; re-en. Sec. 365, Rev. C. 1907; re-en. Sec. 433, R.C.M. 1921; Cal. Pol. C. Sec. 908; re-en. Sec. 433, R.C.M. 1935; Sec. 59-416, R.C.M. 1947; R.C.M. 1947, 59-413, 59-416.

2-16-212. Filing. (1) Whenever a different time is not prescribed by law, the oath of office must be taken, subscribed, and filed within 30 days after the officer has notice of his election or appointment or before the expiration of 15 days from the commencement of his term of office when no such notice has been given.

(2) Every oath of office, certified by the officer before whom the same was taken, must be filed within the time required by law, except when otherwise specially provided, as follows:

(a) the oath of all officers whose authority is not limited to any particular county, in the office of the secretary of state;

(b) the oath of all officers, elected or appointed for any county and of all officers whose duties are local or whose residence in any particular county is prescribed by law and of the clerks of the district courts, in the offices of the clerks of the respective counties.

History: (1)En. Sec. 1, Ch. 1, L. 1907; Sec. 364, Rev. C. 1907; re-en. Sec. 432, R.C.M. 1921; Cal. Pol. C. Sec. 907; re-en. Sec. 432, R.C.M. 1935; Sec. 59-415, R.C.M. 1947; (2)En. Sec. 1014, Pol. C. 1895; re-en. Sec. 366, Rev. C. 1907; re-en. Sec. 434, R.C.M. 1921; Cal. Pol. C. Sec. 909; re-en. Sec. 434, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1949; Sec. 59-417, R.C.M. 1947; R.C.M. 1947, 59-415, 59-417(1), (2).

2-16-213. Term of office — holdover. (1) Every office of which the duration is not fixed by law is held at the pleasure of the appointing power.

(2) Every officer must continue to discharge the duties of his office, although his term has expired, until his successor has qualified.

History: En. Secs. 993, 994, Pol. C. 1895; re-en. Secs. 354, 355, Rev. C. 1907; re-en. Secs. 422, 423, R.C.M. 1921; Cal. Pol. C. Secs. 878, 879; re-en. Secs. 422, 423, R.C.M. 1935; R.C.M. 1947, 59-405, 59-406.

Part 3

Deputies

2-16-301. Appointment of deputies and subordinate officers — number. (1) All assistants, deputies, and other subordinate officers whose appointments are not otherwise provided for must be appointed by the officer or body to whom they are respectively subordinate.

(2) When the number of such deputies or subordinate officers is not fixed by law, it is limited only by the discretion of the appointing power.

(3) The appointment of deputies, clerks, and subordinate officers, when not otherwise provided for, must be made in writing filed in the office of the appointing power or the office of its clerk.

History: (1)En. Sec. 991, Pol. C. 1895; re-en. Sec. 352, Rev. C. 1907; re-en. Sec. 420, R.C.M. 1921; Cal. Pol. C. Sec. 876; re-en. Sec. 420, R.C.M. 1935; Sec. 59-402, R.C.M. 1947; (2)En. Sec. 992, Pol. C. 1895; re-en. Sec. 353, Rev. C. 1907; re-en. Sec. 421, R.C.M. 1921; Cal. Pol. C. Sec. 877; re-en. Sec. 421, R.C.M. 1935; Sec. 59-403, R.C.M. 1947; (3)En. Sec. 1005, Pol. C. 1895; re-en. Sec. 361, Rev. C. 1907; re-en. Sec. 429, R.C.M. 1921; Cal. Pol. C. Sec. 894; re-en. Sec. 429, R.C.M. 1935; Sec. 59-412, R.C.M. 1947; R.C.M. 1947, 59-402, 59-403, 59-412.

2-16-302. Oaths of deputies and others. Deputies, clerks, and subordinate officers must within 10 days after receiving notice of their appointment take and file an oath in the manner required of their principals.

History: En. Sec. 1015, Pol. C. 1895; re-en. Sec. 367, Rev. C. 1907; re-en. Sec. 435, R.C.M. 1921; Cal. Pol. C. Sec. 910; re-en. Sec. 435, R.C.M. 1935; R.C.M. 1947, 59-418.

2-16-303. Powers. In all cases not otherwise provided for, each deputy possesses the powers and may perform the duties attached by law to the office of his principal.

History: En. Sec. 980, Pol. C. 1895; re-en. Sec. 350, Rev. C. 1907; re-en. Sec. 418, R.C.M. 1921; Cal. Pol. C. Sec. 865; re-en. Sec. 418, R.C.M. 1935; R.C.M. 1947, 59-404.

Part 4

Salaries

2-16-401. Salary commission meetings. (1) (a) There is created a Montana salary commission. The commission is composed of eight members, none of whom may be public officers, either elected or appointed. The commission shall be appointed in the following manner and in the following chronological order:

(i) First, the governor shall appoint one member from each of the two major political parties, equally divided between the United States congressional districts.

(ii) Next, the supreme court shall appoint one member from each of the two major political parties, equally divided between the United States congressional districts.

(iii) Next, the majority leader of the senate shall appoint one member from his political party. The minority leader of the senate shall then appoint one member from his political party not from the same United States congressional district as the member appointed by the majority leader.

(iv) Next, the presiding speaker of the house of representatives shall appoint one member from his political party. Lastly, the minority leader in the house of representatives shall appoint one member from his political party not from the same United States congressional district as the member appointed by the speaker.

(b) All appointments shall be made not later than the 60th legislative day.

(2) Commission members shall serve a term of 4 years.

(3) If a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

(4) The commission shall choose one of its members as chairman at its initial meeting, and the executive director of the legislative council or his delegate shall serve as secretary to the commission and shall record and transcribe all minutes of commission meetings and prepare all correspondence, notices, and formal recommendations as directed by the chairman.

(5) The salary commission shall hold at least two meetings before submitting a report to the legislature as provided in 2-16-402. The commission shall hold its meetings in the year prior to each first regular session of the biennium.

(6) All meetings shall be called by the chairman of the commission, and notice of the meeting dates shall be given by mail to each commission member at least 20 days before the day scheduled for the meeting.

(7) A majority of members present at any meeting is sufficient to transact any business to come before the meeting; however, a majority of all commission members is necessary to ratify the commission's recommendations to the legislature.

(8) Commission members shall be reimbursed from the appropriation to the office of the legislative council for their travel expenses incurred, as provided for in 2-18-501 through 2-18-503, as amended, and $25 per day while attending meetings of the commission.

History: (1) thru (3)En. Sec. 1, Ch. 66, L. 1973; amd. Sec. 1, Ch. 41, L. 1974; Sec. 59-1401, R.C.M. 1947; (4) thru (8)Ap. p. Sec. 2, Ch. 66, L. 1973; amd. Sec. 2, Ch. 41, L. 1974; amd. Sec. 8, Ch. 453, L. 1977; Sec. 59-1402, R.C.M. 1947; Ap. p. Sec. 4, Ch. 66, L. 1973; amd. Sec. 3, Ch. 41, L. 1974; Sec. 59-1404, R.C.M. 1947; R.C.M. 1947, 59-1401, 59-1402, 59-1404(part); amd. Sec. 25, Ch. 184, L. 1979.

2-16-402. Reports and recommendations. (1) The commission may request comprehensive reports or studies from any state agency concerning compensation of the judiciary and elective members of the legislative and executive branches of government. Any state agency from which such a report is requested shall furnish the same within a reasonable time as determined by the chairman and the head of the agency concerned. The report or study requested, in addition to such other matters as the commission may request or the agency preparing the report may determine appropriate, shall contain a review and comparison of the levels and form of compensation paid to the judiciary and elective members of the legislative and executive branches with the levels and forms of compensation paid in other states similarly situated.

(2) On or before November 15 prior to each regular session of the biennium, the commission shall submit its formal written recommendations for the level and form of compensation to be paid to the judiciary and the elective members of the legislative and executive branches to each member of the legislature, to each member of the judiciary, and each elective member of the executive branch for review and consideration. A commission member who does not concur in the proposed recommendation may submit his written objections thereto with the formal recommendations submitted by the commission.

History: (1)En. Sec. 3, Ch. 66, L. 1973; Sec. 59-1403, R.C.M. 1947; (2)En. Sec. 4, Ch. 66, L. 1973; amd. Sec. 3, Ch. 41, L. 1974; Sec. 59-1404, R.C.M. 1947; R.C.M. 1947, 59-1403, 59-1404(part).

2-16-403 and 2-16-404 reserved.

2-16-405. Salaries of certain elected state officials. The salaries paid to certain elected officials of the state of Montana for fiscal year 1980 and following years are:

	Fiscal Year 1980	Following June 30, 1980
Governor	$37,500	$40,000
Lieutenant governor	$26,800	$28,700
Chief justice of the supreme court	$39,000	$41,000
Justices of the supreme court, each	$38,000	$40,000
Attorney general	$34,500	$36,500
State auditor	$24,500	$26,500
Superintendent of public instruction	$29,400	$31,500

Public service commissioners	$26,800	$28,700
Secretary of state	$24,500	$26,500
Clerk of the supreme court	$23,875	$25,750

History: En. Sec. 1, Ch. 202, L. 1959; amd. Sec. 2, Ch. 187, L. 1961; amd. Sec. 1, Ch. 212, L. 1963; amd. Sec. 1, Ch. 308, L. 1967; amd. Sec. 1, Ch. 323, L. 1969; amd. Sec. 1, Ch. 314, L. 1971; amd. Sec. 4, Ch. 297, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 1, Ch. 377, L. 1974; amd. Sec. 2, Ch. 461, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 25-501; amd. Sec. 1, Ch. 650, L. 1979.

2-16-406. Salary for all services — how paid. (1) The salary of each such officer shall be for all services required of him or which may hereafter devolve upon him by law, including all services rendered ex officio as a member of any board, commission, or committee, but shall not include actual necessary travel, lodging, and subsistence expenses incidental to his official duties.

(2) Unless otherwise provided by law, the salaries of officers must be paid out of the general fund in the state treasury monthly on the last day of the month.

History: (1)En. Sec. 2, Ch. 202, L. 1959; amd. Sec. 2, Ch. 187, L. 1961; Sec. 25-501.1, R.C.M. 1947; (2)En. Sec. 1133, Pol. C. 1895; amd. Sec. 1, p. 114, L. 1901; re-en. Sec. 435, Rev. C. 1907; amd. Sec. 1, Ch. 107, L. 1917; re-en. Sec. 442, R.C.M. 1921; re-en. Sec. 442, R.C.M. 1935; Sec. 25-507, R.C.M. 1947; R.C.M. 1947, 25-501.1(part), 25-507.

Part 5

Vacancy and Succession

2-16-501. Vacancies created. An office becomes vacant on the happening of any one of the following events before the expiration of the term of the incumbent:

(1) the death of the incumbent;

(2) a determination pursuant to Title 53, chapter 21, part 1, that he is seriously mentally ill;

(3) his resignation;

(4) his removal from office;

(5) his ceasing to be a resident of the state or, if the office be local, of the district, city, county, town, or township for which he was chosen or appointed or within which the duties of his office are required to be discharged;

(6) his absence from the state, without the permission of the legislature, beyond the period allowed by law;

(7) his ceasing to discharge the duty of his office for the period of 3 consecutive months, except when prevented by sickness or when absent from the state by permission of the legislature;

(8) his conviction of a felony or of any offense involving moral turpitude or a violation of his official duties;

(9) his refusal or neglect to file his official oath or bond within the time prescribed;

(10) the decision of a competent tribunal declaring void his election or appointment.

History: En. Sec. 42, p. 385, Bannack Stat.; re-en. Sec. 42, p. 468, Cod. Stat. 1871; amd. Sec. 554, 5th Div. Rev. Stat. 1879; re-en. Sec. 1046, 5th Div. Comp Stat. 1887; amd. Sec. 1101, Pol. C. 1895;

re-en. Sec. 420, Rev. C. 1907; re-en. Sec. 511, R.C.M. 1921; Cal. Pol. C. Sec. 996; re-en. Sec. 511, R.C.M. 1935; R.C.M. 1947, 59-602; amd. Sec. 26, Ch. 184, L. 1979.

2-16-502. Resignations. Resignations must be in writing and made as follows:

(1) by the governor and lieutenant governor, to the legislature if it is in session and, if not, then to the secretary of state;

(2) by all officers commissioned by the governor, to the governor;

(3) by senators and members of the house of representatives, if the legislature is not in session, to the governor and, if it is in session, to the presiding officer of the branch to which the member belongs, who must immediately transmit the same to the governor;

(4) by all county and township officers not commissioned by the governor, to the clerk of the board of commissioners of their respective counties;

(5) by all other appointed officers, to the body or officer that appointed them;

(6) in all cases not otherwise provided for, by filing the resignation in the office of the secretary of state.

History: En. Sec. 41, p. 468, Cod. Stat. 1871; re-en. Sec. 553, 5th Div. Rev. Stat. 1879; re-en. Sec. 1045, 5th Div. Comp. Stat. 1887; amd. Sec. 1100, Pol. C. 1895; re-en. Sec. 419, Rev. C. 1907; amd. Sec. 1, Ch. 8, L. 1921; re-en. Sec. 510, R.C.M. 1921; Cal. Pol. C. Sec. 995; re-en. Sec. 510, R.C.M. 1935; R.C.M. 1947, 59-601.

2-16-503. Notice of removal. Whenever an officer is removed, declared seriously mentally ill, or convicted of a felony or offense involving moral turpitude or a violation of his official duty or whenever his election or appointment is declared void, the body, judge, or officer before whom the proceedings were had must give notice thereof to the officer authorized to fill the vacancy.

History: En. Sec. 1102, Pol. C. 1895; re-en. Sec. 421, Rev. C. 1907; re-en. Sec. 512, R.C.M. 1921; Cal. Pol. C. Sec. 997; re-en. Sec. 512, R.C.M. 1935; R.C.M. 1947, 59-603; amd. Sec. 27, Ch. 184, L. 1979.

2-16-504. Elective officers' inability to perform — filling vacancy — notice. (1) When an incumbent in the office of lieutenant governor, secretary of state, attorney general, auditor, or superintendent of public instruction is found to be permanently unable to perform the functions of his position, a vacancy exists.

(2) When a written declaration, made as hereinafter provided, is transmitted to the legislature that any such officer is unable to discharge the powers and duties of this office, the legislature may convene in the manner provided for the convening of special sessions to determine whether such disability exists or it may defer such determination to the next regular session of the legislature.

(3) If the legislature within 21 days after convening, whether in regular or special session, determines by two-thirds vote of its members that such officer is unable to discharge the powers and duties of his office, this office shall be declared to be vacant and shall be filled as provided by the constitution of Montana or laws enacted pursuant thereto.

(4) The written declaration required hereunder shall be made and transmitted by the lieutenant governor and attorney general unless one of them is the officer whose disability is in question. If the lieutenant governor is the

subject of the declaration, the declaration shall be made by the governor and attorney general; if the attorney general is the subject of the declaration, the declaration shall be made by the governor and secretary of state.

History: En. Sec. 1, Ch. 343, L. 1973; R.C.M. 1947, 59-609.

2-16-505. Filling vacancies in certain elective offices. A vacancy in the office of either the secretary of state, state auditor, attorney general, clerk of the supreme court, or superintendent of public instruction must be filled by a person appointed by the governor, who holds his office until the first Monday in January next after a general election. At such election the office must be filled by election for the unexpired term.

History: En. Sec. 1106, Pol. C. 1895; re-en. Sec. 425, Rev. C. 1907; re-en. Sec. 516, R.C.M. 1921; Cal. Pol. C. Sec. 1001; re-en. Sec. 516, R.C.M. 1935; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 59-607.

2-16-506. Filling vacancies — recess appointments. (1) When any office becomes vacant and no mode is provided by law for filling the vacancy, the governor shall fill the vacancy by appointing a qualified person to fill the unexpired term of the person whose office became vacant.

(2) If the legislature or one house of the legislature must confirm an appointment of a person appointed by the governor to fill a vacancy, the governor may appoint the person to assume office before the legislature meets in its next regular session to consider the appointment. A person so appointed is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the legislature has not yet confirmed the appointment. If the legislature does not confirm the appointment, the governor shall make a new appointment to fill the unexpired term.

History: En. Sec. 1104, Pol. C. 1895; re-en. Sec. 423, Rev. C. 1907; re-en. Sec. 514, R.C.M. 1921; Cal. Pol. C. Sec. 999; re-en. Sec. 514, R.C.M. 1935; amd. Sec. 1, Ch. 388, L. 1973; R.C.M. 1947, 59-605.

2-16-507. Powers and duties of officer filling unexpired term. Any person elected or appointed to fill a vacancy, after filing his official oath and bond, possesses all the rights and powers and is subject to all the liabilities, duties, and obligations as if he had been elected to the office for a full term.

History: En. Sec. 1107, Pol. C. 1895; re-en. Sec. 426, Rev. C. 1907; re-en. Sec. 517, R.C.M. 1921; Cal. Pol. C. Sec. 1004; re-en. Sec. 517, R.C.M. 1935; R.C.M. 1947, 59-608.

2-16-508 through 2-16-510 reserved.

2-16-511. Vacancy in office of governor and lieutenant governor. (1) If the offices of both the governor and the lieutenant governor become vacant, the president of the senate shall become governor and shall appoint a lieutenant governor.

(2) If the president of the senate is unable to assume the office of governor, the speaker of the house shall become governor and a lieutentant governor shall be elected in accordance with the provision of 2-16-512.

History: En. Sec. 1, Ch. 29, L. 1973; R.C.M. 1947, 82-1304.1.

2-16-512. Election by legislature if president of senate and speaker unable to assume office of governor. (1) If neither the president of the senate nor the speaker of the house of representatives is able to assume the office of governor, the legislature, meeting in joint session, shall elect a governor and a lieutenant governor.

(2) When the speaker of the house becomes governor, the legislature will meet in joint session and shall elect a lieutenant governor.

History: **En. Sec. 2, Ch. 29, L. 1973; R.C.M. 1947, 82-1304.2.**

2-16-513. Succession in case of termination or incapacitation of primary successors. (1) If, because of an enemy attack upon the United States, the governor, lieutenant governor, president pro tempore of the senate, and speaker of the house are killed or rendered unable to serve as governor, the senior member of the legislature shall act as governor.

(2) He shall call an emergency session of the legislature at a safe location within the state. The legislature meeting in joint session shall elect a governor.

(3) For the purposes of this section, the member with seniority is the member who has served in the legislature for the longest continuous period of time up to and including his current term. If two or more members of the legislature have equal seniority, the line of succession among them is from eldest to youngest in age.

History: **En. Sec. 1, Ch. 148, L. 1959; R.C.M. 1947, 82-1309; amd. Sec. 28, Ch. 184, L. 1979.**

2-16-514. Successor to serve until next general election. The successor to the governor and the lieutenant governor shall serve until the next general election and shall have all the powers, duties, and emoluments of the respective offices.

History: **En. Sec. 3, Ch. 29, L. 1973; R.C.M. 1947, 82-1304.3.**

2-16-515. Governor and lieutenant governor incapacitated. (1) If both the governor and lieutenant governor are unable to serve as governor, the president of the senate shall become acting governor until the governor or lieutenant governor is able to resume the duties of the office.

(2) If the president of the senate is unable to become acting governor, the speaker of the house of representatives shall become acting governor.

History: **En. Sec. 4, Ch. 29, L. 1973; R.C.M. 1947, 82-1304.4.**

2-16-516 through 2-16-520 reserved.

2-16-521. Powers of acting governor. (1) Every provision of the laws of this state in relation to the powers and duties of the governor and in relation to acts and duties to be performed by others toward him extends to the persons performing for the time being the duties of governor.

(2) An acting governor shall have all the rights, duties, and emoluments of the office of governor while he is so acting.

History: **(1)En. Sec. 373, Pol. C. 1895; re-en. Sec. 148, Rev. C. 1907; re-en. Sec. 127, R.C.M. 1921; Cal. Pol. C. Sec. 383; re-en. Sec. 127, R.C.M. 1935; Sec. 82-1304, R.C.M. 1947; (2)En. Sec. 5, Ch. 29, L. 1973; Sec. 82-1304.5, R.C.M. 1947; R.C.M. 1947, 82-1304, 82-1304.5.**

Part 6

Montana Recall Act

2-16-601. Short title. This part shall be cited as the "Montana Recall Act".

History: En. Sec. 1, I.M. No. 73, approved November 2, 1976; amd. Sec. 2, Ch. 364, L. 1977; R.C.M. 1947, 59-610.

2-16-602. Definitions. As used in this part, the following definitions apply:

(1) "Public office" means a position of duty, trust, or authority created by the constitution or by the legislature or by a political subdivision through authority conferred by the constitution or the legislature that meets the following criteria:

(a) the position must possess a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public;

(b) the powers conferred and the duties to be discharged must be defined, directly or impliedly, by the constitution, the legislature, or by a political subdivision through legislative authority;

(c) the duties must be performed independently and without control of a superior power other than the law, unless the legislature has created the position and placed it under the general control of a superior office or body; and

(d) the position must have some permanency and continuity and not be only temporary or occasional.

(2) "Political subdivision" means a local government unit including but not limited to a county, city, or town established under authority of Article XI, section 1, of The Constitution of the State of Montana or a school district.

(3) "State-district" means a public service commission district, a legislative representative or senatorial district, or a judicial district.

History: En. 59-611 by Sec. 1, Ch. 364, L. 1977; R.C.M. 1947, 59-611.

2-16-603. Officers subject to recall — grounds for recall. (1) Every person holding a public office of the state or any of its political subdivisions, either by election or appointment, is subject to recall from such office.

(2) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for his successor. A public officer holding an appointive office may be recalled by the qualified electors entitled to vote for the successor or successors of the elective officer or officers who have the authority to appoint a person to that position.

(3) Physical or mental lack of fitness, incompetence, violation of his oath of office, official misconduct, or conviction of a felony offense enumerated in Title 45 is the only basis for recall. No person may be recalled for performing a mandatory duty of the office he holds or for not performing any act that, if performed, would subject him to prosecution for official misconduct.

History: En. Sec. 2, I.M. No. 73, approved November 2, 1976; amd. Sec. 3, Ch. 364, L. 1977; R.C.M. 1947, 59-612; amd. Sec. 1, Ch. 398, L. 1979.

2-16-604 through 2-16-610 reserved.

2-16-611. Method of removal cumulative. The recall is cumulative and additional to, rather than a substitute for, other methods for removal of public officers.

History: En. Sec. 3, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 69-613.

2-16-612. Persons qualified to petition — penalty for false signatures. (1) Every person who is a qualified elector of this state may sign a petition for recall of a state officer.

(2) Every person who is a qualified elector of a district of the state from which a state-district officer is elected may sign a petition for recall of a state-district officer of that district or appointed by an officer or the officers of that election district.

(3) Every person who is a qualified elector of a political subdivision of this state may sign a petition for recall of an officer of that political subdivision. However, if a political subdivision is divided into election districts, a person must be a qualified elector in the election district to be eligible to sign a petition to recall an officer elected from that election district.

(4) Any person signing any name other than his own to any petition or knowingly signing his name more than once for the recall or who is not at the time of the signing a qualified elector or any person who knowingly makes a false entry upon an affidavit required in connection with the filing of a petition for the recall of an officer is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-203 or 45-7-208, as applicable.

History: En. Sec. 10, I.M. No. 73, approved November 2, 1976; amd. Sec. 7, Ch. 364, L. 1977; R.C.M. 1947, 59-620.

2-16-613. Limitations on recall petitions. (1) A recall petition may not name more than one officer to be recalled.

(2) No recall petition shall be filed against an officer until he has held office for 2 months.

(3) No recall petition may be filed against an officer for whom a recall election has been held for a period of 2 years during his term of office unless the state or political subdivision or subdivisions financing such recall election is first reimbursed for all expenses of the preceding recall election.

History: (1)En. Sec. 4, I.M. No. 73, approved November 2, 1976; amd. Sec. 4, Ch. 364, L. 1977; Sec. 59-614, R.C.M. 1947; (2), (3)En. Sec. 5, I.M. No. 73, approved November 2, 1976; Sec. 59-615, R.C.M. 1947; R.C.M. 1947, 59-614(part), 59-615.

2-16-614. Number of electors required for recall petition. Recall petitions for elected or appointed state officers shall contain the signatures of qualified electors equalling at least 10% of the number of persons registered to vote at the preceding state general election. A petition for the recall of a state-district officer must contain the signatures of qualified electors equalling at least 15% of the number of persons registered to vote in the last preceding election in that district. Recall petitions for elected or appointed county officers shall contain the signatures of qualified electors equalling at least 15% of the number of persons registered to vote at the preceding county general election. Recall petitions for elected or appointed officers of municipalities or school districts shall contain the signatures of qualified electors equalling at least 20% of the number of persons registered to vote at the preceding election for the municipality or school district.

History: En. Sec. 4, I.M. No. 73, approved November 2, 1976; amd. Sec. 4, Ch. 364, L. 1977; R.C.M. 1947, 59-614(part); amd. Sec. 1, Ch. 308, L. 1979.

2-16-615. Filing of recall petitions — mandamus for refusal. (1) Recall petitions for elected officers shall be filed with the official who is provided by law to accept the declaration of nomination or petition for nomination for such office. Recall petitions for appointed state officers shall be filed with the secretary of state and for appointed county or municipal officers shall be filed with the county election administrator. Recall petitions for appointed officers from other political subdivisions shall be filed with the county election administrator if the boundaries of the political subdivisions lie wholly within one county or otherwise with the secretary of state.

(2) If the secretary of state, county election administrator or other filing official refuses to accept and file any petition for recall with the proper number of signatures of qualified electors, any elector may within 10 days after such refusal apply to the district court for a writ of mandamus. If it is determined that the petition is sufficient, the district court shall order the petition to be filed with a certified copy of the writ attached thereto, as of the date when it was originally offered for filing. On a showing that any filed petition is not sufficient, the court may enjoin certification, printing, or recall election.

(3) All such suits or appeals therefrom shall be advanced on the court docket and heard and decided by the court as expeditiously as possible.

(4) Any aggrieved party may file an appeal within 10 days after any adverse order or decision as provided by law.

History: En. Secs. 6, 12, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 59-616, 59-623; amd. Sec. 375, Ch. 571, L. 1979.

2-16-616. Form of recall petition. (1) The form of the recall petition shall be substantially as follows:

WARNING

A person who knowingly signs a name other than his own to this petition or who signs his name more than once upon a petition to recall the same officer at one election or who is not, at the time he signs this petition, a qualified elector of the state of Montana entitled to vote for the successor of the elected officer to be recalled or the successor or successors of the officer or officers who have the authority to appoint a person to the position held by the appointed officer to be recalled is punishable by a fine of no more than $500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or imprisonment in the state prison for a term not to exceed 10 years, or both.

RECALL PETITION

To the Honorable ...., Secretary of State of the State of Montana (or name and office of other filing officer): We, the undersigned qualified electors of the State of Montana (or name of appropriate state-district or political subdivision) respectfully petition that an election be held as provided by law on the question of whether ...., holding the office of ...., should be recalled for the following reasons: (Setting out a general statement of the reasons for recall in not more than 200 words). By his signature each signer certifies: I have personally signed this petition; I am a qualified elector of the state of Montana and (name of appropriate political subdivision); and my residence and post-office address are correctly written after my name to the best of my knowledge and belief.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, and printed last name of the signer. Each separate sheet of the petition shall contain the heading and reasons for the proposed recall as prescribed above.

History: En. Sec. 7, I.M. No. 73, approved November 2, 1976; amd. Sec. 5, Ch. 364, L. 1977; R.C.M. 1947, 59-617.

2-16-617. Form of circulation sheets. (1) The signatures on each petition shall be placed on sheets of paper known as circulation sheets. Each circulation sheet shall be substantially 8 ½ x 14 inches or a continuous sheet may be folded so as to meet this size limitation. Such circulation sheets shall be ruled with a horizontal line 1 ½ inches from the top thereof. The space above such line shall remain blank and shall be for the purpose of binding.

(2) The petition, for purposes of circulation, may be divided into sections, each section to contain not more than 25 circulation sheets.

(3) Before a petition may be circulated for signatures, a sample circulation sheet must be submitted to the officer with whom the petition must be filed in the form in which it will be circulated. The filing officer shall review the petition for sufficiency as to form and approve or reject the form of the petition, stating his reasons therefor, within 1 week of receiving the sheet.

(4) The petition form submitted must be accompanied by a written statement containing the reasons for the desired recall as stated on the petition. The truth of purported facts contained in the statement shall be sworn to by at least one of the petitioners before a person authorized to administer oaths.

(5) The filing officer shall serially number all approved petitions continuously from year to year.

History: En. Sec. 8, I.M. No. 73, approved November 2, 1976; amd. Sec. 6, Ch. 364, L. 1977; R.C.M. 1947, 59-618.

2-16-618. Forms not mandatory. The forms prescribed in this part are not mandatory, and if substantially followed, the petition shall be sufficient, notwithstanding clerical and merely technical errors.

History: En. Sec. 9, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 59-619.

2-16-619. Submission of circulation sheets — certification of signatures. (1) Signed circulation sheets or sections of a petition for recall must be submitted to the officer responsible for registration of electors in the county in which the signatures were obtained within 3 months of the date the form of the petition was approved under 2-16-617.

(2) An affidavit, in substantially the following form, shall be attached to each circulation sheet or section submitted to the county officer:

(Name of person circulating petition), being first sworn, deposes and says: I circulated or assisted in circulating the petition to which this affidavit is attached, and I believe the signatures thereon are genuine, are the signatures of the persons whose names they purport to be, and that the signers knew the contents of the petition before signing the same.

.... (Signature)

Subscribed and sworn before me this .... day of ......, 19...

.... (Person authorized to take oaths)

Seal .... (Title or notarial information)

History: En. 59-621 by Sec. 8, Ch. 364, L. 1977; R.C.M. 1947, 59-621.

2-16-620. County clerk to verify signatures. (1) The county clerk in each county in which such a petition is signed shall compare the signatures of the electors in such county with registration signatures on file in such clerk's office and, if satisfied the signatures are genuine, certify that fact to the officer with whom the recall petition is to be filed, in substantially the following form:

To the Honorable ...., Secretary of State of the State of Montana (or name and title of other officer):

I, ..., ... (title) of .... County certify that I have compared the signatures on ...... sheets (specifying number of sheets) of the petition for recall No. ...... attached with the signatures of the registered voters as they appear upon the registration records of my office, and I believe ...... (number) signatures are valid for the purpose of the petition. I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and that the post-office address is completed for each valid signature.

Signed: .... (Date) .... (Signature)

Seal .... (Title)

(2) Every such certificate shall be prima facie evidence of the facts stated therein and of the qualifications of the registered voters whose signatures are certified, and the secretary of state or other officer receiving the recall petition shall consider and count only such signatures as are certified, provided that the officer with whom the recall petition is filed shall consider and count any remaining signatures of the registered voters which prove to be genuine and such signatures shall be considered and counted if they are attested to in the manner and form as provided for initiative and referendum petitions.

(3) The county clerk may not retain any petition or any part of it for more than 15 days. At the expiration of such period the county clerk shall deliver the same to the person with whom the petition is required to be filed.

History: En. Sec. 11, I.M. No. 73, approved November 2, 1976; amd. Sec. 9, Ch. 364, L. 1977; R.C.M. 1947, 59-622.

2-16-621. Notification to officer — statement of justification. Upon filing the petition, the official with whom it is filed shall immediately give written notice to the officer named in the petition. The notice shall state that a recall petition has been filed, shall set forth the reasons contained therein, and shall notify the officer named in the recall petition that he has the right to prepare and have printed on the ballot a statement containing not more than 200 words giving reasons why he should not be recalled. No such statement of justification shall be printed on the ballot unless it is delivered to the filing official within 10 days of the date notice is given.

History: En. Sec. 14, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 59-625.

2-16-622. Resignation of officer — proclamation of election. (1) If the officer named in the petition for recall submits his resignation in writing, it shall be accepted and become effective the day it is offered. The vacancy created by such resignation shall be filled as provided by law, provided that the officer named in the petition for recall may not be appointed to fill such vacancy. If the officer named in the petition for recall refuses to resign or does not resign within 5 days after the petition is filed, a special election shall be called unless the filing is within 90 days of a general election, in which case the question shall be placed on a separate ballot at the same time as the general election.

(2) The call of a special election shall be made by the governor in the case of a state or state-district officer or by the board or officer empowered by law to call special elections for a political subdivision in the case of any officer of a political subdivision of the state.

History: En. Sec. 13, I.M. No. 73, approved November 2, 1976; amd. Sec. 10, Ch. 364, L. 1977; R.C.M. 1947, 59-624.

2-16-623 through 2-16-630 reserved.

2-16-631. Notice of recall election. The notice of a recall election shall be in substantially the following form:

NOTICE OF RECALL ELECTION

Notice is hereby given pursuant to law that a recall election will be held on .... (Date) for the purpose of voting upon the recall of .... who holds the office of ....

DATED at ...., ... (Date)

History: En. Sec. 15, I.M. No. 73, approved November 2, 1976; amd. Sec. 11, Ch. 364, L. 1977; R.C.M. 1947, 59-626.

2-16-632. Conduct of special elections. A special election for recall shall be conducted and the results canvassed and certified in the same manner that the law in effect at the time of the election for recall requires for an election to fill the office that is the subject of the recall petition, except as herein otherwise provided. In the case of an official holding a nonelective office, the election shall be conducted and the results canvassed and certified in the same manner that the law in effect at the time of the election for recall requires for an election to fill the office of the person who has the power to appoint such official. The powers and duties conferred or imposed by law upon boards of election, registration officers, canvassing boards, and other public officials who conduct general elections are conferred and imposed upon similar officers conducting recall elections under the provisions of this section together with the penalties prescribed for the breach thereof.

History: En. Sec. 18, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 59-629; amd. Sec. 2, Ch. 308, L. 1979.

2-16-633. Form of ballot. (1) The ballot at such recall election shall set forth the statement contained in the recall petition stating the reasons for demanding the recall of such officer and the officer's statement of reasons why he should not be recalled. Then the question of whether the officer should be recalled shall be placed on the ballot in a form similar to the following:

☐ FOR recalling .... who holds the office of ....
☐ AGAINST recalling .... who holds the office of ....

(2) The form of the ballot shall be approved as provided in the election laws of this state.

History: En. Sec. 16, I.M. No. 73, approved November 2, 1976; amd. Sec. 12, Ch. 364, L. 1977; R.C.M. 1947, 59-627.

2-16-634. Expenses of election. Expenses of a recall election shall be paid in the same manner as the expenses for any other election. The expenditure of such funds constitutes an emergency expenditure of funds, and the political subdivision affected may fund the costs of such an election through emergency funding procedures. In the event a recall election is held for a state or state-district officer, the legislature shall appropriate funds to reimburse the counties involved for costs incurred in running the election.

History: En. Sec. 19, I.M. No. 73, approved November 2, 1976; amd. Sec. 14, Ch. 364, L. 1977; R.C.M. 1947, 59-630.

2-16-635. Officer to remain in office until results declared — filling of vacancy. The officer named in the recall petition continues in office until he resigns or the results of the recall election are officially declared. If a majority of those voting on the question vote to remove the officer, the office becomes vacant and the vacancy shall be filled as provided by law, provided that the officer recalled may in no event be appointed to fill the vacancy.

History: En. Sec. 17, I.M. No. 73, approved November 2, 1976; amd. Sec. 13, Ch. 364, L. 1977; R.C.M. 1947, 59-628.

CHAPTER 17

PROPERTY MANAGEMENT

Part 1 — Real Property and Buildings

Section

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Part 1

Real Property and Buildings

2-17-101. Allocation of office space. The department of administration shall periodically survey the needs of state agencies located in Helena and shall assign space in state office buildings to such agencies. No state agency shall lease, rent, or purchase property for quarters in Helena without prior approval of the department.

History: En. Sec. 8, Ch. 271, L. 1963; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 82-3308.

2-17-102. Warehouses. The department of administration may maintain, rent, lease, or construct warehouses.

History: En. Sec. 3, Ch. 197, L. 1921; re-en. Sec. 286, R.C.M. 1921; re-en. Sec. 286, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1961; amd. Sec. 59, Ch. 326, L. 1974; R.C.M. 1947, 82-1903.

2-17-103. Permanent press room. The department of administration is required to provide for the use of representatives of the press a room on the third floor of the capitol building, adjacent to the assembly hall of the senate, to be used as a permanent press room.

History: En. Sec. 1, Ch. 138, L. 1945; R.C.M. 1947, 43-601.

2-17-104. Deductible insurance plan for state buildings and contents — administration. (1) A deductible plan of insurance may be established for use by the state in insuring state buildings and their contents.

(2) The administration of this section shall be placed in the department of administration with the cooperation of the insurance commissioner.

History: En. Secs. 1, 2, Ch. 86, L. 1971; R.C.M. 1947, 78-1102, 78-1103.

2-17-105. Insurance on state buildings — use of proceeds — building replacement. (1) Moneys received by the state as indemnification for damage to state buildings, except buildings procured by the department of highways by purchase or condemnation for right-of-way purposes, shall be deposited in the bond proceeds and insurance clearance fund.

(2) These moneys may only be:

(a) used to repair the damaged property;

(b) used to replace the damaged property, subject to the limitations in subsection (3) of this section; or

(c) transferred to the fund and account from which the premiums were paid on the policy covering the building. Moneys transferred in this manner may not be spent by the institution or agency having custody of the damaged property but shall be available for future legislative appropriation. If the moneys are not spent or committed within 2 years from the time they are received, they shall automatically revert to the fund and account from which the premiums were paid.

(3) If an insured building is totally destroyed or so badly damaged that repair is impractical, the governing board or officer responsible for the building may authorize any moneys received by the state as indemnification for property damage to be used to replace the building only if the proposed replacement is designed to be used for the same general purposes as the damaged or destroyed building. If the governing board or officer determines that the building should not be replaced, any moneys received by the state as indemnification for property damage over and above any outstanding debt on the building shall be transferred as provided in subsection (2)(c) of this section.

History: En. Sec. 1, Ch. 110, L. 1963; amd. Sec. 23, Ch. 326, L. 1974; R.C.M. 1947, 78-1101.

2-17-106. Highway building space assignment. (1) The department of administration shall assign space in the present highways building, upon completion of the new highways complex, to the following state departments and in the following order of priority:

(a) first to the departments of agriculture and livestock; and

(b) second to the department of natural resources and conservation.

(2) The department of administration shall assign such space with the purpose of maintaining each department's Helena-based offices, in their entirety, in a single central location. When considering assignment of space under this section, the department shall insure that those departments with first priority are provided sufficient space for future growth and that growth of first priority departments, for purposes of space assignment, takes precedence over growth of second and third priority departments.

(3) After assignment to the three named departments, any additional available space may be assigned by the department in accordance with 2-17-101.

History: En. Sec. 1, Ch. 479, L. 1975; R.C.M. 1947, 82-3308.1.

2-17-107 through 2-17-110 reserved.

2-17-111. Custodial care of capitol buildings and grounds. (1) The department of administration is custodian of all state property in the state capitol area.

(2) It is the duty of the department to supervise and direct the work of caring for and maintaining buildings, equipment, and grounds in the capitol area. The department shall include in the department's budget the necessary requests for appropriations for the maintenance, repair, replacement, renewal, or addition to state buildings, equipment, and grounds in the capitol area.

(3) No state agency may alter, improve, repair, or remodel a state building in the capitol area without the approval of the department.

History: En. Sec. 9, Ch. 271, L. 1963; amd. Sec. 98, Ch. 326, L. 1974; Sec. 82-3309, R.C.M. 1947; En. Sec. 10, Ch. 271, L. 1963; Sec. 82-3310, R.C.M. 1947; R.C.M. 1947, 82-3309, 82-3310.

2-17-112. Fire protection for state-owned buildings — department of administration — fire marshal. (1) The department of administration shall obtain information necessary to prepare a budget for the next session of the legislature for fire protection services for state-owned buildings that present particular firefighting problems as determined by the state fire marshal. In preparing the budget, the state may consider providing protection directly or contracting for protection with a local fire service and making payments to local governments for fire services provided to state agencies, all of which are subject to appropriation by the legislature.

(2) The state fire marshal shall review provisions for protection of state-owned buildings in connection with inspections conducted under 50-3-102.

History: En. 82-3310.1, 82-3310.2 by Secs. 1, 2, Ch. 481, L. 1977; R.C.M. 1947, 82-3310.1, 82-3310.2.

2-17-113 through 2-17-120 reserved.

2-17-121. Purpose. In order that the members of the public and the public officers and agencies may obtain information concerning the nature, location, and extent of the real property or interests therein acquired by the state and the manner and method of the disposal of real property or interests therein by the state, a central filing system and index is necessary. Therefore, it is the intent of the legislature to provide that the board of land commissioners shall maintain a central filing system and central index of all real property held, acquired, leased, administered, or disposed of by state agencies and that all state agencies shall provide the board of land commissioners with the information necessary to establish and maintain such a central filing system and index.

History: En. Sec. 1, Ch. 144, L. 1979.

2-17-122. Definitions. When used in 2-17-121 through 2-17-126, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Holding real property" means possessing real property by virtue of title, lease, or administering real property.

(2) "Person" means a natural person or a firm, association, partnership, cooperative, corporation, or other business entity; any agency of the state; any government subdivision; or any other entity whatever.

(3) "Real property" means land surface or subsurface and property attached or affixed to land.

(4) "State agency" means any agency, department, board, or commission of the state.

History: **En. Sec. 2, Ch. 144, L. 1979.**

2-17-123. Duty of state agencies to furnish information on land holdings, leases, administered lands, and acquisitions. Except as provided in 2-17-125, every state agency holding, leasing, or administering any real property shall, immediately after such real property is acquired or within 180 days after July 1, 1979, for real property now used or held, furnish to the board of land commissioners the following information, when applicable:

(1) legal description of the real property;

(2) when the real property was acquired or leased;

(3) where the abstracts, deeds, or other indicia of ownership to the real property may be found;

(4) name of the state agency holding the real property;

(5) name of the grantor or lessor;

(6) nature of interest held by the state or term of lease.

History: **En. Sec. 3, Ch. 144, L. 1979.**

2-17-124. Duty of state agencies to furnish information concerning land disposal. Except as provided in 2-17-125, every state agency disposing of any real property to any person shall, immediately after disposal, furnish to the board of land commissioners the following information:

(1) legal description of the real property;

(2) when the disposition of the real property was made;

(3) where the deeds or other indicia of disposal may be found;

(4) name of the state agency disposing of the real property;

(5) name of the grantee;

(6) nature of the interest disposed of by the state.

History: **En. Sec. 4, Ch. 144, L. 1979.**

2-17-125. Exception from reporting — treatment of highway lands. (1) A state agency is not required to file information under 2-17-123 and 2-17-124 with respect to easements, rights-of-way, and interests of a temporary nature such as licenses or permits.

(2) The department of highways is not required to file information under 2-17-123 and 2-17-124 for land held by the department in connection with highway or road construction, but the department shall file with respect to land held by the department for administrative purposes on a permanent basis.

History: **En. Sec. 5, Ch. 144, L. 1979.**

2-17-126. Establishment and maintenance of central filing system. The board of land commissioners shall establish and maintain a central filing system and central index of the information which is required to be filed by 2-17-123 through 2-17-125. The filing system and index shall be open to the public during regular office hours at the offices of the department of state lands.

History: En. Sec. 6, Ch. 144, L. 1979.

Part 2

Equipage and Supplies

2-17-201. Inspection of property and warehouses. The warehouses, supplies, furnishings, and property of all kinds used in and about the business of the state is subject at all times to the inspection of the department of administration and any officer or employee of any agency.

History: En. Sec. 13, Ch. 66, L. 1923; re-en. Sec. 293.13, R.C.M. 1935; amd. Sec. 78, Ch. 326, L. 1974; R.C.M. 1947, 82-1923.

2-17-202. Inventory — property to be charged to receiving agency. (1) Each person in charge of any state property must, upon request of the department of administration, furnish a sworn statement of all personal property in his possession or under his charge belonging to the state, together with an estimate of its value. He must furnish any other information in connection therewith as the department requires.

(2) Each state department, office, board, commission, and institution must be charged with all items of personal property and all other personal property placed at the disposal of any such state department, office, board, commission, and institution after June 30, 1923, and shall be credited with all worn out, used, lost, injured, or destroyed property from time to time, as may be reported to the department of administration and shall be held responsible for all items of personal property not accounted for.

History: (1)En. Sec. 1, Ch. 66, L. 1923; re-en. Sec. 293.1, R.C.M. 1935; amd. Sec. 66, Ch. 326, L. 1974; Sec. 82-1911, R.C.M. 1947; (2)En. Sec. 2, Ch. 66, L. 1923; re-en. Sec. 293.2, R.C.M. 1935; Sec. 82-1912, R.C.M. 1947; R.C.M. 1947, 82-1911, 82-1912(part).

Part 3

Communication Systems

2-17-301. Supervision of mailing, data processing, duplicating, copying, and telephone facilities. (1) The department of administration shall maintain and supervise any central mailing, messenger service, data processing, duplicating, and copying facilities for state agencies in the capitol area.

(2) The department shall maintain and supervise any central telephone switchboard for state agencies located in Helena.

(3) Cost records shall be maintained and agencies shall be billed for services received.

History: (1), (3)En. Sec. 6, Ch. 271, L. 1963; amd. Sec. 1, Ch. 298, L. 1967; amd. Sec. 3, Ch. 101, L. 1969; amd. Sec. 2, Ch. 313, L. 1971; amd. Sec. 80, Ch. 326, L. 1974; Sec. 82-3306, R.C.M. 1947; (2)En. Sec. 7, Ch. 271, L. 1963; amd. Sec. 98, Ch. 326, L. 1974; Sec. 82-3307, R.C.M. 1947; R.C.M. 1947, 82-3306, 82-3307.

2-17-302. Communication systems. (1) The department of administration shall:

(a) provide communication services to all agencies of state government. The state communications system shall be capable of passing voice, video, data, written information, and other forms of communication to and from distant points.

(b) exercise general supervision over all existing communications systems for all agencies of state government;

(c) plan, review, and approve any additional installations of communications equipment and systems for all agencies of state government. In approving the installation of additional communications equipment or systems, the department shall first consult with and consider the recommendations and advice of the executive heads of the various state agencies.

(d) approve standards and procedures for selection, acquisition, and operation of communication equipment;

(e) insure that all communications equipment is properly maintained. The department is authorized to establish a centralized maintenance program for all state communications equipment and to contract the equipment maintenance if it is in the state's best interest. The department shall maintain cost records and bill agencies for services rendered.

(f) provide assistance to the legislature, governor, and state agencies relative to state and interstate communication matters;

(g) provide a means whereby political subdivisions of the state may utilize the state communications system, upon such terms and under such conditions the department may establish;

(h) accept federal funds granted by congress or by executive order for any purposes of this section, as well as gifts and donations from individuals and private organizations or foundations;

(i) foster the development of new and innovative communications systems and techniques for state government, including but not limited to satellite communications, and high-speed, high-density data transfer. To carry out the purposes of this section, the department may contract with qualified private organizations, foundations, or individuals if it is in the state's best interest.

(2) The department shall adopt adequate rules for the use of any communications equipment and facilities now in use or hereafter made available.

History: En. Sec. 3, Ch. 230, L. 1971; amd. Sec. 6, Ch. 215, L. 1974; amd. Sec. 86, Ch. 326, L. 1974; amd. Sec. 1, Ch. 315, L. 1975; amd. Sec. 1, Ch. 341, L. 1977; R.C.M. 1947, 82-3325.

2-17-303. Transfer of funds, equipment, facilities, and employees. (1) In order to provide for a centralized, economical, efficient, and effective maintenance program for all state communications equipment and facilities and to ensure that needless duplication of efforts in this field do not occur, the department of administration may order such transfer of appropriated funds, custody, and control of equipment and facilities and employees to the department as may be necessary to implement this program. Upon transfer, as authorized in this section, a credit account shall be established in the name of the agency from which transfer is made in the amount of funds appropriated and the market value of equipment and facilities. Such credit account shall be used to defray the costs of maintenance and repair as provided in 2-17-302(1)(e).

(2) The provisions of this section shall in no manner affect the rights or privileges of any employee transferred to the department of administration

under the public employees' retirement system, the group insurance plan, or personnel system.

History: En. 82-3325.1 and 82-3325.2 by Sec. 2, 3, Ch. 315, L. 1975; R.C.M. 1947, 82-3325.1, 82-3325.2.

2-17-304. Bases of director's decisions. It is incumbent on the department of administration to base all decisions pertinent to Montana's state communication services on the factors of cost, quality of service, availability of service, and ability to maintain the system.

History: En. Sec. 7, Ch. 230, L. 1971; amd. Sec. 87, Ch. 326, L. 1974; R.C.M. 1947, 82-3329.

2-17-305. Cooperation with other government agencies not limited. This part shall not be construed so as to prohibit or limit a state agency from availing itself of connection to and cooperation with other state and federal agencies for the purpose of communications and information gathering and distributing services.

History: En. Sec. 8, Ch. 230, L. 1971; R.C.M. 1947, 82-3330.

2-17-306. Exemption of law enforcement communications system — exception. The provisions of this part shall not apply to the law enforcement communications system or its successor except as to the provisions dealing with the purchase, maintenance, and allocation of communication facilities. However, the department of justice shall cooperate with the department of administration to coordinate the communications networks of the state.

History: En. Sec. 9, Ch. 230, L. 1971; amd. Sec. 88, Ch. 326, L. 1974; R.C.M. 1947, 82-3331.

Part 4

Vehicles

2-17-401. Title to motor vehicles. The legal title to state-owned motor vehicles shall be held in the name of the state only, and all agencies holding title to motor vehicles are hereby required to transfer the same to the state. In instances where such transfer would affect the federal funding of the agency involved, the agency transferring a vehicle in accordance with this part shall be reimbursed in the amount of the fair value of the vehicle transferred necessary to assure continued participation in federal funding of the program.

History: En. Sec. 1, Ch. 320, L. 1971; amd. Sec. 173, Ch. 316, L. 1974; amd. Sec. 1, Ch. 355, L. 1974; R.C.M. 1947, 53-514(part).

2-17-402. Seal on motor vehicles. A motor vehicle owned by the state shall have a seal 8 inches in diameter placed upon the vehicle in accordance with the rules adopted by the department of highways, motor pool division.

History: En. Sec. 3, Ch. 320, L. 1971; amd. Sec. 175, Ch. 316, L. 1974; amd. Sec. 3, Ch. 355, L. 1974; R.C.M. 1947, 53-516.

2-17-403. Requisitions for purchases. All requisitions for motor vehicle purchases shall be submitted to the department of administration twice yearly at the times that it specifies. Other requisitions for automobile purchases may not be accepted by it unless the governor considers the purchase to be an emergency necessity.

History: En. Sec. 6, Ch. 320, L. 1971; amd. Sec. 178, Ch. 316, L. 1974; amd. Sec. 6, Ch. 355, L. 1974; R.C.M. 1947, 53-519(1).

2-17-404 through 2-17-410 reserved.

2-17-411. Helena-based motor pool — department of highways, motor pool division — exceptions. (1) The department of highways, motor pool division, is the custodian of all motor vehicles operated out of the Helena area used primarily to carry passengers or having a cargo rating of three-quarters of a ton or less and which do not carry specialized equipment that would render them unfit for interagency use, owned or leased by the state or its agencies.

(2) This part does not apply to a motor vehicle used in the service of the governor, the attorney general, or the highway patrol.

History: (1)En. Sec. 1, Ch. 320, L. 1971; amd. Sec. 173, Ch. 316, L. 1974; amd. Sec. 1, Ch. 355, L. 1974; Sec. 53-514, R.C.M. 1947; (2)En. Sec. 7, Ch. 320, L. 1971; amd. Sec. 179, Ch. 316, L. 1974; Sec. 53-520, R.C.M. 1947; R.C.M. 1947, 53-514(part), 53-520.

2-17-412. Assignment and transfer. (1) The department of highways, motor pool division, may assign the use of state-owned or leased motor vehicles under its control to state officers or institutions or employees thereof.

(2) All motor vehicles in the custody of the department of highways, motor pool division, which are not placed under custody of the division by 2-17-411 shall be equitably transferred to the custody of those agencies that have need of vehicles as demonstrated by use records.

History: (1)En. Sec. 2, Ch. 320, L. 1971; amd. Sec. 174, Ch. 316, L. 1974; amd. Sec. 2, Ch. 355, L. 1974; Sec. 53-515, R.C.M. 1947; (2)En. 53-519.1 by Sec. 7, Ch. 355, L. 1974; Sec. 53-519.1, R.C.M. 1947; R.C.M. 1947, 53-515(part), 53-519.1.

2-17-413. Interagency rental. The department of highways, motor pool division, shall promulgate regulations for interagency rental of motor vehicles. These regulations shall govern the manner in which vehicles in the custody of one agency and for a time not required for use by that agency can be rented by another agency for its use. These regulations shall also establish the charge for vehicle rental which may include reimbursement of actual costs for administration, maintenance, service, operation, storage, and replacement costs of these vehicles.

History: En. 53-519.2 by Sec. 8, Ch. 355, L. 1974; R.C.M. 1947, 53-519.2.

2-17-414 through 2-17-420 reserved.

2-17-421. Use — state business only — compensation for driving personal vehicle. A state officer or employee may not use a state-owned or leased motor vehicle for his own personal and private use, nor may he be compensated for driving his own motor vehicle unless that motor vehicle is used on state business.

History: En. Sec. 4, Ch. 320, L. 1971; amd. Sec. 176, Ch. 316, L. 1974; amd. Sec. 4, Ch. 355, L. 1974; R.C.M. 1947, 53-517.

2-17-422. Operating history. All motor vehicle operating history records for motor vehicles under control of the department of highways, motor pool division, shall be entered in the department of highways, motor pool division. These records shall show the purchase price of the vehicle and the items of expense incurred in the operation of the vehicle, including the expenses of gas, oil, repairs, labor, storage, and service. A complete summary of the operating cost and history record of all state-owned or leased vehicles and trucks shall be prepared for each fiscal year.

History: En. Sec. 6, Ch. 320, L. 1971; amd. Sec. 178, Ch. 316, L. 1974; amd. Sec. 6, Ch. 355, L. 1974; R.C.M. 1947, 53-519(2).

2-17-423. Use rules. (1) The department of highways, motor pool division, may adopt and enforce reasonable rules governing the use and operation of motor vehicles under control of the department of highways, motor pool division.

(2) The department shall establish reasonable rules governing:

(a) employee responsibility for misuse and negligent damage of state-owned or leased vehicles;

(b) determination of when the use of privately owned vehicles on state business may be justified as in the best interest of the state;

(c) procedures for determining when a state vehicle is not available for use.

(3) The division shall adopt and formulate travel rules providing:

(a) for filing an application for travel showing necessity for trips, points to be visited, approximate time of departure and return;

(b) for filing a report upon completion of the trip, showing actual points reached, mileage traveled, and car cost record data;

(c) for recording in the car operating history record book all items of expense incurred in the purchase of gas, oil, repairs, labor, storage, or service; and

(d) that a decal be affixed to the instrument panel of every state-owned vehicle with the following information contained on the decal:

"Any officer or employee of the state government who uses or authorizes the use of any state-owned motor-propelled passenger carrying vehicle, or of any motor-propelled passenger carrying vehicle leased by the state government, for other than official purposes shall be summarily removed from office by the head of the department of establishment concerned."

History: (1)En. Sec. 2, Ch. 320, L. 1971; amd. Sec. 174, Ch. 316, L. 1974; amd. Sec. 2, Ch. 355, L. 1974; Sec. 53-515, R.C.M. 1947; (2)En. 53-519.3 by Sec. 11, Ch. 355, L. 1974; Sec. 53-519.3, R.C.M. 1947; (3)En. Sec. 5, Ch. 320, L. 1971; amd. Sec. 177, Ch. 316, L. 1974; amd. Sec. 5, Ch. 355, L. 1974; Sec. 53-518, R.C.M. 1947; R.C.M. 1947, 53-515(part), 53-518, 53-519.3.

2-17-424 through 2-17-430 reserved.

2-17-431. Costs. The department of highways, motor pool division, may charge the individual state agencies using the motor vehicles the actual costs for administration and their maintenance, service, storage, and replacement.

History: En. Sec. 2, Ch. 320, L. 1971; amd. Sec. 174, Ch. 316, L. 1974; amd. Sec. 2, Ch. 355, L. 1974; R.C.M. 1947, 53-515(part).

2-17-432. Violation a misdemeanor — dismissal. A state officer or employee violating this part is guilty of a misdemeanor and upon conviction shall be dismissed from state employment.

History: En. Sec. 8, Ch. 320, L. 1971; amd. Sec. 180, Ch. 316, L. 1974; R.C.M. 1947, 53-521.

CHAPTER 18

STATE EMPLOYEE CLASSIFICATION, COMPENSATION, AND BENEFITS

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Part 1

General Provisions

2-18-101. Definitions. As used in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Compensation" means the annual or hourly wage or salary and includes the state contribution to group benefits under provisions of 2-18-703.

(3) "Department" means the department of administration.

(4) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104 from the statewide classification system.

(5) "Permanent position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206 and approved as such in the biennium budget.

(6) "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period in a permanent position.

(7) "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

(8) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

(9) "Program" means a combination of planned efforts to provide a service.

(10) "Seasonal position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206 and which is a permanent position but which is interrupted by the seasonal nature of the position.

(11) "Temporary position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period of time not to exceed 9 months.

History: (1), (3), (5) thru (7)En. Sec. 1, Ch. 440, L. 1973; amd. Sec. 1, Ch. 488, L. 1977; Sec. 59-903, R.C.M. 1947; (2), (4)En. 59-915 by Sec. 1, Ch. 563, L. 1977; Sec. 59-915, R.C.M. 1947; R.C.M. 1947, 59-903(1), (2), (part(3)), (4), (5), 59-915; amd. Sec. 1, Ch. 512, L. 1979; amd. Sec. 1, Ch. 568, L. 1979; amd. Sec. 1, Ch. 678, L. 1979.

2-18-102. Personnel administration — general policy setting. (1) Except as otherwise provided by law or collective bargaining agreement, the department shall:

(a) encourage and exercise leadership in the development of effective personnel administration within the several agencies in the state and make available the facilities of the department to this end;

(b) foster and develop programs for recruitment and selection of capable persons for permanent, seasonal, temporary, and other types of positions and for the improvement of employee effectiveness, including training, safety, health, counseling, welfare, discipline, grievances, and evaluation for productivity and retention in permanent status;

(c) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the policies made thereunder and report the findings and recommendations to the governor;

(d) establish policies, procedures, and forms for the maintenance of records of all employees in the state service;

(e) apply and carry out parts 1 and 2 and the policies thereunder and perform any other lawful acts which may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

(2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided that such agencies remain in compliance with policies, procedures, time tables, and standards established by the department.

(3) The department shall develop and issue personnel policies for the state. Adequate public notice shall be given to all interested parties of proposed changes or additions to the personnel policies before the date they are to take effect. If requested by any of the affected parties, the department shall schedule a public hearing on proposed changes or additions to the personnel policies before the date they are to take effect.

History: **En. Sec. 14, Ch. 440, L. 1973; R.C.M. 1947, 59-913; amd. Sec. 2, Ch. 568, L. 1979.**

2-18-103. Officers and employees excepted. Parts 1 and 2 do not apply to the following positions in state government:

(1) elected officials;

(2) county assessors and their chief deputy;

(3) officers and employees of the legislative branch;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, appointed by the legislature, or appointed by other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) teachers under the authority of the department of institutions;

(11) investment officer and assistant investment officer of the board of investments; and

(12) four professional staff positions under the board of oil and gas conservation.

History: **En. Sec. 2, Ch. 440, L. 1973; amd. Sec. 1, Ch. 256, L. 1974; amd. Sec. 1, Ch. 391, L. 1975; amd. Sec. 2, Ch. 488, L. 1977; amd. Sec. 1, Ch. 565, L. 1977; R.C.M. 1947, 59-904; amd. Sec. 2, Ch. 365, L. 1979; amd. Sec. 2, Ch. 412, L. 1979; amd. Sec. 2, Ch. 512, L. 1979.**

2-18-104. Exemption for personal staff — limit. (1) Subject to the limitations in subsections (2) and (3), members of a personal staff are exempt from the application of 2-18-204, 2-18-205, 2-18-207, and 2-18-1011 through 2-18-1013.

(2) The personal staff who are exempted by subsection (1) may not exceed 10 unless otherwise approved by the department according to criteria developed by the department. Under no circumstances may the total exemptions of each elected official exceed 15.

(3) The number of members of the personal staff of the public service commission who are exempted by subsection (1) may not exceed five and must be approved by the department according to criteria approved by the department.

History: **En. Sec. 1, Ch. 440, L. 1973; amd. Sec. 1, Ch. 488, L. 1977; R.C.M. 1947, 59-903(part (3)); amd. Sec. 3, Ch. 512, L. 1979.**

2-18-105. Merit system. The merit system, established in 1940 by certain state agencies of state government as a requirement for receipt of federal funds, shall continue to operate for those agencies under the policies and procedures established by the merit system council.

History: **En. Sec. 16, Ch. 440, L. 1973; R.C.M. 1947, 59-914.**

2-18-106. No limitation on legislative authority. Parts 1, 2, and 3 do not limit the authority of the legislature relative to appropriations for salary and wages. The budget director shall adjust his determinations in accordance with legislative appropriations.

History: **En. Sec. 13, Ch. 440, L. 1973; amd. Sec. 5, Ch. 181, L. 1975; R.C.M. 1947, 59-912; amd. Sec. 2, Ch. 678, L. 1979.**

Part 2

Classification

2-18-201. Development of personnel classification plan. The department shall develop a personnel classification plan for all state positions and classes of positions in state service following hearings involving affected employees and employee organizations, except those exempt in 2-18-103 and 2-18-104.

History: **En. Sec. 3, Ch. 440, L. 1973; R.C.M. 1947, 59-905; amd. Sec. 4, Ch. 512, L. 1979.**

2-18-202. Guidelines for classification. (1) In providing for the classification plan, the department shall group all positions in the state service into defined classes based on similarity of duties performed, responsibilities assumed, and complexity of work so that:

(a) similar qualifications of education, experience, knowledge, skill, and ability can be required of applicants for each position in the class;

(b) the same title can be used to identify each position in the class;

(c) similar pay may be provided under the same conditions with equity to each position within the class.

(2) A class may consist of only one position.

History: **En. Sec. 4, Ch. 440, L. 1973; R.C.M. 1947, 59-906.**

2-18-203. Review of positions — change in classification. (1) The department shall continuously review all positions on a regular basis and adjust classifications to reflect significant changes in duties and responsibilities. In the event adjustments are to be made to the classification specifications or criteria utilized for allocating positions in the classification specifications affecting employees within a bargaining unit, the department shall consult with the representative of the bargaining unit prior to implementation of the adjustments, except for blue collar, teachers, and liquor store clerks classification plans, which shall remain mandatory negotiable items under the Collective Bargaining Act.

(2) Employees and employee organizations will be given the opportunity to appeal any changes in classifications or positions.

(3) The period of time for which retroactive pay for a classification or position appeal may be awarded under parts 1 through 3 of this chapter or under 2-18-1011 through 2-18-1013 may not extend beyond 30 days prior to the date the appeal was filed. This provision shall not affect a classification or position appeal already in process on April 26, 1977.

History: En. Sec. 5, Ch. 440, L. 1973; amd. Sec. 1, Ch. 166, L. 1975; amd. Sec. 1, Ch. 471, L. 1977; R.C.M. 1947, 59-907; amd. Sec. 1, Ch. 577, L. 1979.

2-18-204. Determination of number and classes of employees in each agency. (1) Based on documentation to be submitted by each agency, the department shall determine the classes of positions of employees of each agency or program thereof before the beginning of each fiscal year. At any time, upon request of the agency, the department may amend the classes of positions of employees in any agency or program thereof.

(2) Based on documentation to be submitted by each agency, the budget director shall determine the number of positions and employees (full-time equivalents) of each agency or program thereof prior to preparation of the executive budget and before the beginning of each fiscal year. At any time, upon the request of the agency, the budget director may amend the number of positions or employees (full-time equivalents) in any agency or program thereof.

(3) This section does not limit legislative authority to amend the determinations of the department or the budget director.

History: En. Sec. 10, Ch. 440, L. 1973; amd. Sec. 2, Ch. 181, L. 1975; R.C.M. 1947, 59-909.

2-18-205. Department authorization for change in classes of positions. An agency may not change the classes of positions under its authority without the authorization of the department.

History: En. Sec. 12, Ch. 440, L. 1973; amd. Sec. 4, Ch. 181, L. 1975; R.C.M. 1947, 59-911; amd. Sec. 1, Ch. 468, L. 1979.

2-18-206. List of positions maintained. To facilitate state budgeting and as directed by the budget director, each agency shall maintain a list of current authorized positions, the number of positions in each class, and the salaries or wages being paid, appropriated, or proposed for each class.

History: En. Sec. 9, Ch. 440, L. 1973; amd. Sec. 1, Ch. 181, L. 1975; R.C.M. 1947, 59-908.

2-18-207. Department authorization for increase of salary or wage of class. An agency may not increase the salary or wage of any class of positions without authorization of the department.

History: En. Sec. 11, Ch. 440, L. 1973; amd. Sec. 3, Ch. 181, L. 1975; R.C.M. 1947, 59-910; amd. Sec. 2, Ch. 468, L. 1979.

Part 3

Compensation Determination

2-18-301. Purpose and intent of part — rules. (1) The purpose of this part is to provide the compensation necessary to attract and retain competent and qualified employees in order to perform the services the state is required to provide to its citizens.

(2) It is the intent of the legislature that, for the biennium ending June 30, 1981, the:

(a) pay schedules provided for in 2-18-311 through 2-18-315 supersede any other plan or systems established through collective bargaining after the adjournment of the 46th legislature;

(b) pay levels provided for in 2-18-311 through 2-18-315 may not be increased through collective bargaining after adjournment of the 46th legislature; and

(c) total funds required to implement the pay schedules provided for in 2-18-311 through 2-18-315 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the 46th legislature.

(3) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(4) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part.

History: En. 59-922 by Sec. 8, Ch. 563, L. 1977; R.C.M. 1947, 59-922; amd. Sec. 3, Ch. 678, L. 1979.

2-18-302. Salary schedules maintained by department. The department shall maintain a schedule of all salaries paid to personnel of civil executive state offices and shall only approve payroll claims agreeing with that schedule. All changes in personnel or salary status shall be authorized as provided by law, and the department shall alter the schedule accordingly when notified by the authorizing agency. However, no changes in personnel or salary status may be authorized that will cause an agency to exceed its appropriation or that will result in a deficiency or supplemental appropriation request to the legislature.

History: En. Sec. 4, Ch. 97, L. 1961; amd. Sec. 49, Ch. 326, L. 1974; R.C.M. 1947, 82-109.4.

2-18-303. Procedures for utilizing pay schedules. (1) The pay schedules provided in 2-18-311 and 2-18-312 shall be implemented as follows:

(a) The pay schedule provided in 2-18-311 indicates the annual compensation for the fiscal year ending June 30, 1980, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(b) The pay schedule provided in 2-18-312 indicates the annual compensation for the fiscal year ending June 30, 1981, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(c) Each new employee shall advance from step 1 to step 2 of a grade after successfully completing 6 months of probationary service. The anniversary date of an employee shall be established at the end of the probationary period in accordance with rules promulgated by the department.

(d) (i) The compensation of each employee on the first day of the first pay period in fiscal year 1980 shall be that amount which corresponds to the grade and step occupied on the last day of the preceding fiscal year of 1979.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1981 shall be that amount which corresponds to the grade and step occupied on the last day of the fiscal year 1980.

(iii) In compliance with rules adopted to implement this part, each employee is eligible on his anniversary date to advance one step in the pay matrix each fiscal year. However, if the employee's anniversary date falls between (inclusive) July 1 and the first day of the first pay period of fiscal year 1980 or 1981, as the case may be, he will advance one step on the first day of that pay period.

(2) The pay schedules provided in 2-18-311 and 2-18-312 and the provisions of subsection (1) of this section do not apply to those institutional teachers, liquor store occupations, or blue-collar occupations compensated under the pay schedules provided in 2-18-313, 2-18-314, or 2-18-315.

(3) The pay schedules provided in 2-18-313, 2-18-314, or 2-18-315 shall be implemented as follows:

(a) (i) The pay schedules provided in 2-18-313 indicate the annual compensation for the contracted school term for teachers employed by institutions under the authority of the department of institutions for fiscal years 1980 and 1981.

(ii) The compensation of each teacher on the first day of the first pay period in July, 1980, shall be that amount which corresponds to his level of academic achievement and the next highest grade from that occupied on June 30, 1979.

(iii) The compensation of each teacher on the first day of the first pay period in July, 1981, shall be that amount which corresponds to his level of achievement and the next highest grade from that occupied on June 30, 1980.

(b) (i) The pay schedules provided in 2-18-314 indicate the maximum hourly compensation for fiscal years ending June 30, 1980, and June 30, 1981, for those employees in liquor store occupations who have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1980 or 1981, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(c) (i) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, 1980, and June 30, 1981, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1980 or 1981, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) No member of a bargaining unit may receive the amounts indicated in the respective pay schedules provided in 2-18-311, 2-18-312, or 2-18-313, 2-18-314, or 2-18-315 until the bargaining unit of which he is a member ratifies a completely integrated collective bargaining agreement covering the biennium ending June 30, 1981.

(ii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, 1979, retroactivity to that date may be negotiated.

(iii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, 1979, members of the bargaining unit involved will continue to receive the compensation they were receiving as of June 30, 1979.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules provided in 2-18-313, 2-18-314, or 2-18-315 may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee shall not be reduced by the implementation of the pay schedules provided for in 2-18-311, 2-18-312, or 2-18-313, 2-18-314, or 2-18-315.

(6) The department may authorize a separate pay schedule for medical doctors if the rates provided in 2-18-311 and 2-18-312 are not sufficient to attract and retain fully licensed and qualified physicians at the state institutions.

(7) The department may develop a program which will enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. Insofar as the program may apply to employees within a collective bargaining unit, it shall be a negotiable subject under 39-31-305.

History: En. 59-916 by Sec. 2, Ch. 563, L. 1977; R.C.M. 1947, 59-916; amd. Sec. 4, Ch. 678, L. 1979.

2-18-304. Longevity allowance. In addition to the compensation provided for in 2-18-311, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed 5 years of uninterrupted state service shall receive the larger of $10 a month or 10% of the difference between the base compensation for his grade and step (where applicable) and the base compensation for the next highest grade and corresponding step (where applicable) multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service. Service to the state is not interrupted by authorized leaves of absence.

History: En. 59-920 by Sec. 6, Ch. 563, L. 1977; R.C.M. 1947, 59-920; amd. Sec. 5, Ch. 678, L. 1979.

2-18-305. Allocation between wages and group benefits. (1) The dollar amounts shown in the respective pay schedules provided in 2-18-311, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, as the case may be, represent the maximum amount allocated by the state for wages and group benefits, exclusive of longevity as defined in 2-18-304. Except as provided in subsection (2) of this section, that amount specifically allocated for group benefits shall be determined by 2-18-703. An employee who elects not to be covered by a state employee group benefit plan will receive as wages the amount shown in the appropriate pay schedule less the state contribution for group benefits as determined by 2-18-703.

(2) Employees may, through collective bargaining, determine the allocation of the amounts shown in the pay schedules provided in 2-18-311, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, as the case may be, between wages and group benefits, except that in no case may the group benefits allocation be less than the amounts provided in 2-18-703.

History: En. 59-919 by Sec. 5, Ch. 563, L. 1977; R.C.M. 1947, 59-919; amd. Sec. 6, Ch. 678, L. 1979.

2-18-306. Determination of weekly or hourly pay rate. When the monthly or annual salary rate payable to an officer or employee of the state has been set by law or otherwise, notwithstanding any other provision of law, the weekly or hourly rate of pay shall be determined by dividing the annual salary by 52 weeks or 2,080 hours.

History: En. Sec. 9, Ch. 95, L. 1969; R.C.M. 1947, 25-507.9.

2-18-307. Repealed. Sec. 17, Ch. 678, L. 1979.

2-18-308 through 2-18-310 reserved.

2-18-311. Pay schedule for fiscal year 1980.

Grade	STEP 01	STEP 02	STEP 03	STEP 04	STEP 05	STEP 06	STEP 07	STEP 08	STEP 09	STEP 10	STEP 11	STEP 12	STEP 13
1	5,892	6,186	6,310	6,436	6,565	6,696	6,830	6,967	7,106	7,248	7,393	7,541	7,692
2	6,313	6,629	6,762	6,897	7,035	7,176	7,320	7,466	7,615	7,767	7,922	8,080	8,242
3	6,774	7,112	7,254	7,399	7,547	7,698	7,852	8,009	8,169	8,332	8,499	8,669	8,842
4	7,274	7,638	7,791	7,947	8,106	8,268	8,433	8,602	8,774	8,949	9,128	9,311	9,497
5	7,828	8,219	8,383	8,551	8,722	8,896	9,074	9,255	9,440	9,629	9,822	10,018	10,218
6	8,433	8,855	9,032	9,213	9,397	9,585	9,777	9,973	10,172	10,375	10,583	10,795	11,011
7	9,104	9,559	9,750	9,945	10,144	10,347	10,554	10,765	10,980	11,200	11,424	11,652	11,885
8	9,829	10,320	10,526	10,737	10,952	11,171	11,394	11,622	11,854	12,091	12,333	12,580	12,832
9	10,632	11,164	11,387	11,615	11,847	12,084	12,326	12,573	12,824	13,080	13,342	13,609	13,881
10	11,513	12,089	12,331	12,578	12,830	13,087	13,349	13,616	13,888	14,166	14,449	14,738	15,033
11	12,474	13,098	13,360	13,627	13,900	14,178	14,462	14,751	15,046	15,347	15,654	15,967	16,286
12	13,541	14,218	14,502	14,792	15,088	15,390	15,698	16,012	16,332	16,659	16,992	17,332	17,679
13	14,699	15,434	15,743	16,058	16,379	16,707	17,041	17,382	17,730	18,085	18,447	18,816	19,192
14	16,043	16,845	17,181	17,525	17,876	18,234	18,599	18,970	19,350	19,737	20,132	20,535	20,946
15	17,445	18,317	18,684	19,058	19,439	19,828	20,225	20,629	21,042	21,463	21,892	22,330	22,776
16	18,993	19,942	20,341	20,748	21,163	21,586	22,019	22,459	22,908	23,366	23,834	24,310	24,796
17	20,674	21,708	22,142	22,585	23,037	23,497	23,967	24,447	24,936	25,435	25,943	26,462	26,991
18	22,525	23,652	24,125	24,607	25,100	25,602	26,115	26,638	27,170	27,714	28,269	28,834	29,411
19	24,564	25,792	26,308	26,835	27,371	27,919	28,478	29,048	29,628	30,221	30,825	31,441	31,441
20	26,787	28,127	28,690	29,264	29,849	30,445	31,055	31,676	32,309	32,955	33,614	33,614	33,614
21	29,235	30,697	31,311	31,937	32,576	33,227	33,892	34,569	35,260	35,966	35,966	35,966	35,966
22	31,920	33,516	34,186	34,869	35,567	36,278	37,004	37,744	38,499	38,499	38,499	38,499	38,499
23	34,857	36,600	37,332	38,078	38,840	39,617	40,409	41,217	41,217	41,217	41,217	41,217	41,217
24	38,086	39,990	40,790	41,606	42,438	43,287	44,153	44,153	44,153	44,153	44,153	44,153	44,153
25	41,631	43,713	44,588	45,479	46,389	47,316	47,316	47,316	47,316	47,316	47,316	47,316	47,316

NOTE:
INCLUDES INSURANCE.

History: En. 59-917 by Sec. 3, Ch. 563, L. 1977; R.C.M. 1947, 59-917; amd. Sec. 7, Ch. 678, L. 1979.

2-18-312. Pay schedule for fiscal year 1981.

Grade	STEP 01	STEP 02	STEP 03	STEP 04	STEP 05	STEP 06	STEP 07	STEP 08	STEP 09	STEP 10	STEP 11	STEP 12	STEP 13
1	6,412	6,732	6,867	7,004	7,144	7,287	7,433	7,582	7,734	7,889	8,047	8,208	8,372
2	6,845	7,188	7,332	7,479	7,629	7,782	7,938	8,097	8,259	8,424	8,592	8,764	8,939
3	7,320	7,686	7,840	7,997	8,157	8,320	8,486	8,656	8,829	9,006	9,186	9,370	9,557
4	7,835	8,227	8,392	8,560	8,731	8,906	9,084	9,266	9,451	9,640	9,833	10,030	10,231
5	8,405	8,825	9,002	9,182	9,366	9.553	9,744	9,939	10,138	10,341	10,548	10,759	10,974
6	9,029	9,480	9,670	9,863	10,060	10,261	10,466	10,675	10,889	11,107	11,329	11,556	11,787
7	9,720	10,206	10,410	10,618	10,830	11,047	11,268	11,493	11,723	11,957	12,196	12,440	12,689
8	10,466	10,989	11,209	11,433	11,662	11,895	12,133	12,376	12,624	12,876	13,134	13,397	13,665
9	11,294	11,859	12,096	12,338	12,585	12,837	13,094	13,356	13;623	13,895	14,173	14,456	14,745
10	12,201	12,811	13,067	13,328	13,595	13,867	14,144	14,427	14,716	15,010	15,310	15,616	15,928
11	13,191	13,851	14,128	14,411	14,699	14,993	15,293	15,599	15,911	16,229	16,554	16,885	17,223
12	14,290	15,004	15,304	15,610	15,922	16,240	16,565	16,896	17,234	17,579	17,931	18,290	18,656
13	15,483	16,257	16,582	16,914	17,252	17,597	17,949	18,308	18,674	19,047	19,428	19,817	20,213
14	16,952	17,800	18,156	18,519	18,890	19,268	19,654	20,046	20,447	20,857	21,274	21,699	22,133
15	18,404	19,324	19,711	20,105	20,507	20,917	21,335	21,761	22,197	22,641	23,094	23,555	24,026
16	20,006	21,007	21,427	21,855	22,293	22,738	23,194	23,657	24,131	24,614	25,106	25,608	26,120
17	21,746	22,833	23,290	23,755	24,230	24,715	25,209	25,713	26,227	26,751	27,286	27,832	28,388
18	23,663	24,846	25,343	25,850	26,367	26,894	27,433	27,981	28,541	29,111	29,693	30,287	30,893
19	25,773	27,062	27,603	28,156	28,719	29,294	29,880	30,478	31,088	31,710	32,344	32,991	32,991
20	28,074	29,478	30,068	30,669	31,282	31,907	32,545	33,196	33,859	34,536	35,227	35,227	35,227
21	30,608	32,139	32,782	33,437	34,106	34,787	35,483	36,193	36,918	37,656	37,656	37,656	37,656
22	33,387	35,057	35,758	36,473	37,202	37,947	38,705	39,479	40,269	40,269	40,269	40,269	40,269
23	36,428	38,250	39,014	39,795	40,591	41,403	42,231	43,075	43,075	43,075	43,075	43,075	43,075
24	39,770	41,759	42,595	43,446	44,315	45,202	46,105	46,105	46,105	46,105	46,105	46,105	46,105
25	43,440	45,613	46,525	47,455	48,404	49,373	49,373	49,373	49,373	49,373	49,373	49,373	49,373

NOTE:
INCLUDES INSURANCE.

History: En. 59-918 by Sec. 4, Ch. 563, L. 1977; R.C.M. 1947, 59-918; amd. Sec. 8, Ch. 678, L. 1979.

2-18-313. Pay schedules for institutional teachers. (1) Teacher pay schedule for fiscal year 1980:

Experience (Grade)	BA (Step 1)	BA+1qtr. (Step 2)	BA+2qtr. (Step 3)	5th Year (Step 4)	MA (Step 5)	MA+1qtr. (Step 6)
0	10,250	10,577	10,915	11,079	11,243	11,582
1	10,635	11,001	11,368	11,456	11,735	12,102
2	11,021	11,427	11,822	12,025	12,227	12,624
3	11,407	11,851	12,275	12,498	12,719	13,145
4	11,793	12,275	12,729	12,971	13,211	13,665
5	12,179	12,700	13,183	13,444	13,703	14,187
6	12,564	13,124	13,637	13,915	14,195	14,708
7	12,950	13,550	14,089	14,388	14,687	15,229
8	13,336	13,974	14,543	14,861	15,181	15,750
9	13,724	14,399	14,997	15,335	15,673	16,271

(2) Teacher pay schedule for fiscal year 1981:

Experience (Grade)	BA (Step 1)	BA+1qtr. (Step 2)	BA+2qtr. (Step 3)	5th Year (Step 4)	MA (Step 5)	MA+1qtr. (Step 6)
0	11,070	11,420	11,783	11,959	12,135	12,498
1	11,483	11,875	12,269	12,363	12,662	13,056
2	11,897	12,332	12,756	12,973	13,190	13,616
3	12,311	12,787	13,241	13,481	13,718	14,175
4	12,724	13,241	13,728	13,988	14,245	14,732
5	13,138	13,697	14,215	14,495	14,773	15,292
6	13,551	14,152	14,702	15,000	15,301	15,851
7	13,965	14,609	15,187	15,508	15,828	16,410
8	14,379	15,064	15,674	16,015	16,358	16,968
9	14,795	15,519	16,161	16,523	16,886	17,527
10	15,208	15,974	16,705	17,031	17,413	18,086

History: En. Sec. 9, Ch. 678, L. 1979.

Compiler's Comments

Codification. Sec. 16, Ch. 678, L. 1979, provided: "The code commissioner shall codify sections 9, 10, and 11 of this act in Title 2, chapter 18, part 3, and preferably shall codify them as 2-18-313, 2-18-314, and 2-18-315, respectively."

2-18-314. Pay schedules for liquor store occupations. (1) Liquor store pay schedule for fiscal year 1980:

Grade	$/Hour
L1	4.533
L2	4.893
L3	5.263
L4	5.468
L5	5.683
L6	6.133
L7	6.623
L8	7.173

(2) Liquor store pay schedule for fiscal year 1981:

Grade	$/Hour
L1	4.893
L2	5.253
L3	5.623
L4	5.828
L5	6.043
L6	6.493
L7	6.983
L8	7.533

History: **En. Sec. 10, Ch. 678, L. 1979.**

Compiler's Comments

Codification. Sec. 16, Ch. 678, L. 1979, provided: "The code commissioner shall codify sections 9, 10, and 11 of this act in Title 2, chapter 18, part 3, and preferably shall codify them as 2-18-313, 2-18-314, and 2-18-315, respectively."

2-18-315. Pay schedules for blue-collar occupations. (1) Blue-collar pay schedule for fiscal year 1980:

Grade	$/Hour
B1	5.036
B2	5.364
B3	5.692
B4	6.020
B5	6.348
B6	6.676
B7	7.004
B8	7.332
B9	7.660
B10	7.988
B11	8.316
B12	8.644
B00**	8.972

(2) Blue-collar pay schedule for fiscal year 1981:

Grade	$/Hour
B1	5.363
B2	5.691
B3	6.019
B4	6.347
B5	6.675
B6	7.003
B7	7.331
B8	7.659
B9	7.987
B10	8.315
B11	8.643
B12	8.971
B00**	9.299

Up to $.031 of the hourly increase granted above for Fiscal Year 1981 shall not be granted to an employee to the extent that the employee would receive a rate, commonly called a red-circled rate, exceeding the above listed rates due to the fact that such employee, at the time the blue collar plan was originally implemented, was paid at a rate greater than the standard blue collar rate for his classification.

(3) In recognition that the blue-collar employee classes in the university system have been paid at rates higher than employees in the blue-collar classes in the executive branch, it is the intent of the legislature during the next biennium that the board of regents seek wage settlements which reduce the current wage disparities or provide wages equal to those of employees in the executive branch.

History: **En. Sec. 11, Ch. 678, L. 1979.**

Compiler's Comments

Codification. Sec. 16, Ch. 678, L. 1979, provided: "The code commissioner shall codify sections 9, 10, and 11 of this act in Title 2, chapter 18, part 3, and preferably shall codify them as 2-18-313, 2-18-314, and 2-18-315, respectively."

Part 4

Payroll Systems

2-18-401. Central payroll system — state auditor to provide for inclusion of agencies. The state auditor shall install and operate a uniform state central payroll system for all state agencies. The auditor may provide for the orderly inclusion of state agencies into such system and may make exceptions from the operation thereof for such periods as he determines necessary.

History: **En. Sec. 1, Ch. 95, L. 1969; amd. Sec. 1, Ch. 51, L. 1977; R.C.M. 1947, 25-507.1(part).**

2-18-402. Payroll revolving account — auditor to determine disbursements and transfers. (1) An account in the revolving fund of the state treasury is hereby created, to be known as the state payroll revolving account, which account may be utilized for the payment of compensation to officers and employees of the state and all amounts withheld therefrom, pursuant to law.

(2) The amount to be disbursed from the state payroll revolving account at any time shall be determined by the state auditor and, on his order, shall be transferred forthwith from the fund, account, and appropriation otherwise properly chargeable therewith to the state payroll revolving account.

History: **En. Sec. 8, Ch. 95, L. 1969; R.C.M. 1947, 25-507.8.**

2-18-403. Service charges. The state auditor may provide for a system of charges for services rendered by the state central payroll system to any department or agency of the state. Funds collected under this section shall be deposited to the credit of a revolving fund account and expended for the purpose of paying the expenses incurred by the state central payroll system.

History: **En. Sec. 10, Ch. 95, L. 1969; R.C.M. 1947, 25-507.10.**

2-18-404. Payroll roster — changes certified by appointing powers. (1) The state auditor shall establish and maintain a payroll roster of all persons employed by every state agency and may establish and maintain a roster of all established positions. The payroll roster shall include both merit system and exempt employees but shall not necessarily include emergency appointees or the equivalent.

(2) Each appointing power shall correctly and promptly certify to the state auditor all changes, modifications, additions, and deletions to the payroll roster in compliance with all applicable merit service, fiscal, and other pertinent laws and rules.

(3) The state central payroll system shall disburse or otherwise act in reliance upon all payroll roster certifications and attendance reports certified to the state auditor by the respective appointing powers.

History: **En. Secs. 4, 5, Ch. 95, L. 1969; R.C.M. 1947, 25-507.4, 25-507.5.**

2-18-405. Payroll based on actual, end-of-period figures — pay date — change of payroll periods. (1) By January 1, 1979, all state payroll systems shall be based upon actual payroll figures submitted after the end of the payroll period and may not be based upon estimated payroll.

(2) All state payroll systems shall provide for the fixing of payroll periods and designated days on which salaried employees shall be paid for the preceding payroll period. The pay date shall be uniform for all employees of each state agency employed in the same geographic area and payroll warrants shall be distributed or mailed within 10 business days following the close of the payroll period.

(3) The payroll period of employees of a state agency may not be changed by inclusion of the agency into the state payroll system or by any revision or modification of the system unless notice of the proposed change has been given to each employee who will be affected by such change in the form and manner prescribed by the state auditor not less than 60 days prior to the effective date of the change.

History: **(1), (2)En. Secs. 1, 2, Ch. 95, L. 1969; amd. Secs. 1, 2, Ch. 51, L. 1977; Secs. 25-507.1, 25-507.2, R.C.M. 1947; (3)En. Sec. 3, Ch. 95, L. 1969; Sec. 25-507.3, R.C.M. 1947; R.C.M. 1947, 25-507.1(part), 25-507.2, 25-507.3; amd. Sec. 29, Ch. 184, L. 1979.**

2-18-406 through 2-18-410 reserved.

2-18-411. Lost warrants — duplicate. (1) Upon receipt of proof satisfactory to the state auditor that a payroll warrant issued by the state auditor has been lost or destroyed prior to its delivery to the employee to whom it is payable, the state auditor shall, upon certification by the payee's appointing power, issue a duplicate warrant in payment of the same amount without requiring a bond from the payee and any loss incurred in connection therewith shall be charged against the account from which the payment was derived.

(2) A payroll warrant shall be considered to have been lost if it has been sent to the payee but not received by him within a reasonable time, consistent with the policy of prompt payment of employees, or if it has been sent to a state officer or employee for delivery to the payee or for forwarding to another state officer or employee for such delivery and has not been received within such reasonable time.

History: **En. Sec. 6, Ch. 95, L. 1969; R.C.M. 1947, 25-507.6.**

2-18-412. Designation of person to receive decedent's warrants — reissuance. Any person now or hereafter employed by the state may file with his appointing power a designation of a person who, notwithstanding any other provision of law, shall, on the death of the employee, be entitled to receive all warrants that would have been payable to the decedent had he survived. The employee may change the designation from time to time. A person so designated shall claim such warrants from the state auditor and on sufficient proof of identity, the state auditor shall reissue the warrant in the name of the designated person and deliver said warrant to the designated person.

History: En. Sec. 7, Ch. 95, L. 1969; R.C.M. 1947, 25-507.7.

Part 5

Travel, Meals, and Lodging

2-18-501. Meals, lodging, and transportation of persons in state service. Every elected official, appointed members of boards, commissions, councils, department directors, and all other state employees shall be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) For travel within the state of Montana, the following provisions apply:

(a) The governor shall be authorized actual and necessary expenses not to exceed $40 per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding $21 per day except as provided in subsection (2)(c), plus $2 for the morning meal, $3.50 for the midday meal, and $6.50 for the evening meal. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) For travel out of the state of Montana, the following provisions apply:

(a) The governor shall be authorized actual and necessary travel expenses not to exceed $70 per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding $40 per day plus $3 for the morning meal, $5 for the midday meal, and $8.50 for the evening meal. All claims for the lodging expense reimbursement allowed under this subsection must be documented by an appropriate receipt.

(c) All elected state officials, appointed members of boards, commissioners, council, department directors, and all other state employees shall be authorized the actual cost of lodging when traveling in the normal course of their duties to certain designated areas. The department of administration shall designate those areas in the United States where the actual cost of lodging shall be reimbursed.

(3) When other than commercial, nonreceiptable lodging facilities are utilized by a state employee while conducting official state business in a

travel status, the amount of $7 will be authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1)(b) or (2)(b) above. However, when overnight accommodations are provided at the expense of any government entity, no reimbursement may be claimed for lodging.

(4) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status shall be subject to reimbursement.

(5) The provisions of this section shall not be construed as affecting the validity of 5-2-301.

(6) The department of administration shall prescribe rules necessary to effectively administer this section for state government.

(7) All commercial air travel shall be by the least expensive class service available.

History: En. Sec. 2, Ch. 66, L. 1955; amd. Sec. 1, Ch. 207, L. 1957; amd. Sec. 1, Ch. 108, L. 1961; amd. Sec. 1, Ch. 116, L. 1963; amd. Sec. 1, Ch. 48, L. 1967; amd. Sec. 1, Ch. 273, L. 1969; amd. Sec. 1, Ch. 10, L. 1971; amd. Ch. 295, L. 1971; amd. Sec. 3, Ch. 495, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 1, Ch. 439, L. 1975; amd. Sec. 1, Ch. 483, L. 1977; R.C.M. 1947, 59-538; amd. Sec. 1, Ch. 643, L. 1979.

2-18-502. Computation of meal allowance. (1) To be eligible for the meal allowance provided in 2-18-501, an employee must have been in a travel status for more than 3 continuous hours. If eligible, an employee receives:

(a) the morning meal allowance if in a travel status between the hours of 12:01 a.m. and 10 a.m.;

(b) the midday meal allowance if in a travel status between the hours of 10:01 a.m. and 3 p.m.; and

(c) the evening meal allowance if in a travel status between the hours of 3:01 p.m. and 12 midnight;

(d) only one of the three meal allowances provided, if the travel was performed within the employee's assigned travel shift;

(e) a maximum of two meal allowances if the travel begins before or was completed after the employee's assigned travel shift and the travel did not exceed 24 hours.

(2) "Travel shift" is that period of time beginning 1 hour before and terminating 1 hour after the employee's normally assigned work shift.

(3) The department of administration shall prescribe rules necessary to effectively administer this section for state government.

History: En. Sec. 3, Ch. 66, L. 1955; amd. Sec. 4, Ch. 495, L. 1973; amd. Sec. 1, Ch. 213, L. 1974; amd. Sec. 2, Ch. 439, L. 1975; amd. Sec. 2, Ch. 483, L. 1977; R.C.M. 1947, 59-539.

2-18-503. Mileage — allowance. (1) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds, when using their own automobiles in the performance of official duties, are entitled to collect mileage for the distance actually traveled by automobile and no more unless otherwise specifically provided by law.

(2) When the individual is authorized to operate a privately owned vehicle even though a government-owned or leased vehicle is available, a rate of 3 cents less per mile than the mileage rate allowed by the United States internal revenue service for the preceding year shall be paid.

(3) When a privately owned vehicle is used because a government-owned or leased vehicle is not available or because such use is in the best interest of the governmental entity, a rate equal to the mileage allotment allowed by the United States internal revenue service for the preceding year shall be paid for the first 1,000 miles and 3 cents per mile less for all miles thereafter traveled within a given calendar month.

(4) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds, when using their own airplanes in the performance of official duties, are entitled to collect mileage for the nautical air miles actually traveled at a rate of twice the mileage allotment for automobile travel and no more unless specifically provided by law.

(5) This section does not alter 5-2-301.

(6) The department of administration shall prescribe rules necessary for the effective administration of this section for state government.

History: En. Sec. 4590, Pol. C. 1895; re-en. Sec. 3111, Rev. C. 1907; re-en. Sec. 4884, R.C.M. 1921; amd. Sec. 1, Ch. 16, L. 1933; re-en. Sec. 4884, R.C.M. 1935; amd. Sec. 1, Ch. 121, L. 1941; amd. Sec. 1, Ch. 201, L. 1947; amd. Sec. 1, Ch. 93, L. 1949; amd. Sec. 1, Ch. 124, L. 1951; amd. Sec. 1, Ch. 106, L. 1961; amd. Sec. 1, Ch. 123, L. 1963; amd. Sec. 2, Ch. 48, L. 1967; amd. Sec. 1, Ch. 495, L. 1973; amd. Sec. 9, Ch. 355, L. 1974; amd. Sec. 3, Ch. 439, L. 1975; amd. Sec. 1, Ch. 532, L. 1975; amd. Sec. 1, Ch. 453, L. 1977; R.C.M. 1947, 59-801; amd. Sec. 1, Ch. 622, L. 1979.

Compiler's Comments

Statement of Intent. The statement of intent attached to SB 370 (Ch. 622, L. 1979) provided: "A statement of intent is included with this Bill because the Committee wished to clarify the reasons for and conditions under which increased compensation is granted to owners of private aircraft when used for state business.

1. The intent of this increase is to permit adequate compensation for the use of private aircraft when used for state business.

2. It is also the intent of this Bill that the Department of Administration provide rules to insure the necessary computation and documentation of the savings effected by, or the necessity for, the use of private aircraft rather than the use of state motor vehicles for state business. This cost-efficiency documentation pertains to Section 1, subsection (6) of Senate Bill No. 370."

2-18-504. Mileage computed by shortest traveled route. Wherever mileage is allowed to any sheriff or other officer, juror, witness, or other person under any law of Montana, the same shall be computed according to the shortest traveled route, when such shortest route is passable.

History: En. Sec. 1, Ch. 7, L. 1919; re-en. Sec. 4901, R.C.M. 1921; re-en. Sec. 4901, R.C.M. 1935; R.C.M. 1947, 25-217.

2-18-505 through 2-18-510 reserved.

2-18-511. Claim for expenses. Every such person so engaged shall periodically submit a claim containing a schedule of expenses and amounts claimed for said period. Said schedule shall show in what capacity such person was engaged each day while away from the department in which said daily duties arose and shall show expense items of each day in detail, such as the amount of per diem allowance claimed, transportation fare, mileage, and other such items.

History: En. Sec. 4, Ch. 66, L. 1955; amd. Sec. 26, Ch. 97, L. 1961; R.C.M. 1947, 59-540.

2-18-512. Prohibition on travel expenses for conventions — exception. Hereafter, no state officer or employee of the state shall receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance upon any convention, meeting, or other gathering of public officers except for attendance upon such convention, meeting, or other gatherings as said officer or employee may by virtue of his office find it necessary to attend.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part).

Part 6

Leave Time

2-18-601. Definitions. For the purpose of this part, the following definitions apply:

(1) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision thereof.

(2) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, and persons contracted as independent contractors or hired under personal services contracts.

(3) "Permanent employee" means an employee who is assigned to a position designated as permanent on the appropriate list of authorized positions referenced in 2-18-206 and approved as such in the biennium budget.

(4) "Part-time employee" means an employee who normally works less than 40 hours a week.

(5) "Full-time employee" means an employee who normally works 40 hours a week.

(6) "Temporary employee" means an employee assigned to a position designated as temporary on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period of time not to exceed 9 months.

(7) "Seasonal employee" means an employee assigned to a position designated as seasonal on the appropriate agency list of authorized positions referenced in 2-18-206 and for which the agency has a permanent need but which is interrupted by the seasonal nature of the assignment.

(8) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer.

(9) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or his immediate family.

(10) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

(11) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(12) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

History: (1)En. Sec. 1, Ch. 476, L. 1973; R.C.M. 1947, 59-1007.1; (2)En. Sec. 7, Ch. 131, L. 1949; R.C.M. 1947, 59-1007; amd. Sec. 30, Ch. 184, L. 1979; amd. Sec. 3, Ch. 568, L. 1979.

2-18-602. Repealed. Sec. 12, Ch. 568, L. 1979.

2-18-603. Holidays — observance when falling on employee's day off. (1) Any full-time employee who is scheduled for a day off on a day which is observed as a legal holiday, except Sundays, shall be entitled to receive a day off either on the day preceding or the day following the holiday, whichever allows a day off in addition to the employee's regularly scheduled days off. Part-time employees receive paid holiday time off based only on the number of hours scheduled for the holiday.

(2) For purposes of this section, the term "employee" does not include nonteaching school district employees.

History: En. Sec. 1, Ch. 108, L. 1971; R.C.M. 1947, 59-1009; amd. Sec. 4, Ch. 568, L. 1979.

2-18-604. Administration of rules. The department of administration or the administrative officer of any county, city, or political subdivision is responsible for the proper administration of the employee annual, sick, or military leave provisions and the jury duty provisions found in this part and shall promulgate rules necessary to achieve the uniform administration of these provisions and to prevent the abuse thereof. When promulgated, the rules are effective as to all employees of the state or any county, city, or political subdivision thereof.

History: En. Sec. 10, Ch. 568, L. 1979.

Compiler's Comments

Codification. Sec. 11, Ch. 568, L. 1979, provided: "It is intended that section 10 be codified as an integral part of Title 2, chapter 18, part 6, and the provisions of Title 2, chapter 18, part 6, apply to section 10."

2-18-605 through 2-18-610 reserved.

2-18-611. Annual vacation leave. (1) Each permanent full-time employee shall earn annual vacation leave credits from the first day of employment. For calculating vacation leave credits, 2,080 hours (52 weeks x 40 hours) shall equal 1 year. Vacation leave credits earned shall be credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of 6 calendar months.

(2) Seasonal employees shall earn vacation credits. However, such persons must be employed 6 qualifying months before they may use the vacation credits. In order to qualify, such employees must immediately report back for work when operations resume in order to avoid a break in service.

(3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked the qualifying period.

(4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status exceeding 15 working days.

(5) Temporary employees do not earn vacation leave credits, except that a temporary employee who is subsequently hired into a permanent position

within the same jurisdiction without a break in service and temporary employees who are employed continuously longer than 6 months may count as earned leave credits for the immediate term of temporary employment.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(1), (4); amd. Sec. 5, Ch. 568, L. 1979.

2-18-612. Rate earned. Vacation leave credits are earned at a yearly rate calculated in accordance with the following schedule, which applies to the total years of an employee's employment with any agency whether the employment is continuous or not:

Years of employment	Working days credit
1 day through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years on	24

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(3); amd. Sec. 6, Ch. 568, L. 1979.

2-18-613. Repealed. Sec. 12, Ch. 568, L. 1979.

2-18-614. Military leave considered service. A period of absence from employment with the state, county, or city occurring either during a war involving the United States or in any other national emergency and for 90 days thereafter for one of the following reasons is considered as service for the purpose of determining the number of years of employment used in calculating vacation leave credits under this section:

(1) having been ordered on active duty with the armed forces of the United States;

(2) voluntary service on active duty in the armed forces or on ships operated by or for the United States government; or

(3) direct assignment to the United States department of defense for duties related to national defense efforts if a leave of absence has been granted by the employer.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(2).

2-18-615. Absence because of illness not chargeable against vacation unless employee approves. Absence from employment by reason of illness shall not be chargeable against unused vacation leave credits unless approved by the employee.

History: En. Sec. 5, Ch. 131, L. 1949; amd. Sec. 5, Ch. 350, L. 1969; amd. Sec. 4, Ch. 476, L. 1973; R.C.M. 1947, 59-1005.

2-18-616. Determination of vacation dates. The dates when employees' annual vacation leaves shall be granted shall be determined by agreement between each employee and his employing agency with regard to the best interest of the state, any county or city thereof as well as the best interests of each employee.

History: En. Sec. 6, Ch. 131, L. 1949; R.C.M. 1947, 59-1006.

2-18-617. Accumulation of leave — cash for unused — transfer. (1) Annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.

(2) An employee who terminates his employment for reason not reflecting discredit on himself shall be entitled upon the date of such termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period set forth in 2-18-611.

(3) However, if an employee transfers between agencies of the same jurisdiction, there shall be no cash compensation paid for unused vacation leave. In such a transfer the receiving agency assumes the liability for the accrued vacation credits transferred with the employee.

History: (1)En. Sec. 2, Ch. 131, L. 1949; amd. Sec. 2, Ch. 350, L. 1969; amd. Sec. 2, Ch. 121, L. 1971; amd. Sec. 1, Ch. 148, L. 1974; Sec. 59-1002, R.C.M. 1947; (2), (3)En. Sec. 3, Ch. 131, L. 1949; amd. Sec. 3, Ch. 350, L. 1969; amd. Sec. 3, Ch. 476, L. 1973; Sec. 59-1003, R.C.M. 1947; R.C.M. 1947, 59-1002, 59-1003; amd. Sec. 1, Ch. 548, L. 1979; amd. Sec. 7, Ch. 568, L. 1979.

2-18-618. Sick leave. (1) Each permanent full-time employee shall earn sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) shall equal 1 year. Sick leave credits shall be credited at the end of each pay period. Sick leave credits shall be earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status exceeding 15 working days.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) An employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave shall be computed on the basis of the employee's salary or wage at the time he terminates his employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment therefor shall be the responsibility of the agency wherein the sick leave accrues. However, no employee forfeits any sick leave rights or benefits he had accrued prior to July 1, 1971. However, where an employee transfers between agencies within the same jurisdiction, he shall not be entitled to a lump-sum payment. In such a transfer the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(6) An employee who receives a lump-sum payment pursuant to this section and who is again employed by any agency shall not be credited with any sick leave for which the employee has previously been compensated.

(7) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

History: En. 59-1008 by Sec. 1, Ch. 93, L. 1971; amd. Sec. 5, Ch. 476, L. 1973; amd. Sec. 1, Ch. 309, L. 1975; R.C.M. 1947, 59-1008; amd. Sec. 8, Ch. 568, L. 1979.

2-18-619. Jury duty — service as witness. (1) Each employee who is under proper summons as a juror shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Juror fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his juror time off against his annual leave, he shall not be required to remit his juror fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowance paid him by the court.

(2) An employee subpoenaed to serve as a witness shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Witness fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his witness time off against his annual leave, he shall not be required to remit his witness fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowances paid him by the court.

(3) Employers may request the court to excuse their employees from jury duty if they are needed for the proper operation of a unit of state or local government.

History: En. Sec. 6, Ch. 476, L. 1973; amd. Sec. 1, Ch. 154, L. 1974; R.C.M. 1947, 59-1010; amd. Sec. 9, Ch. 568, L. 1979.

2-18-620. Mandatory leave of absence for employees holding public office — return requirements. (1) Employers of employees elected or appointed to a public office in the city, county, or state shall grant such employees leaves of absence, not to exceed 180 days per year, while they are performing public service.

(2) Employees granted a leave shall make arrangements to return to work within 10 days following the completion of the service for which the leave was granted unless they are unable to do so because of illness or disabling injury certified to by a licensed physician.

(3) Any unemployment benefits paid to any person by application of this section shall not be charged against any employer under the unemployment insurance law.

History: En. 59-1011, 59-1012 by Secs. 1, 2, Ch. 107, L. 1975; R.C.M. 1947, 59-1011, 59-1012; amd. Sec. 2, Ch. 57, L. 1979.

2-18-621. Unlawful termination. It shall be unlawful for an employer to terminate or separate an employee from his employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and 2-18-614. Should a question arise under this section, it shall be submitted to arbitration as provided in Title 27, chapter 5, unless there is a collective bargaining agreement applicable.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(5).

Part 7

Group Insurance Generally

2-18-701. Definitions. In this part, as it applies to a person employed in the executive, judicial, or legislative branches of state government, "employee" means:

(1) a permanent full-time employee defined in 2-18-601;

(2) a part-time permanent employee, as defined in 2-18-601, who is scheduled to work a regular schedule of 20 hours or more a week;

(3) a seasonal employee, as defined in 2-18-601, who is scheduled to work 6 months or more a year;

(4) elected officials;

(5) officers and employees of the legislative branch;

(6) judges and employees of the judicial branch; and

(7) academic, professional, and administrative personnel having individual contracts under the authority of the board of regents of higher education or the state board of public education.

History: En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977; R.C.M. 1947, 11-1024(5); amd. Sec. 12, Ch. 678, L. 1979.

2-18-702. Group insurance for public employees and officers. (1) All counties, cities, towns, school districts, and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, and/or group life insurance contracts or plans for the benefit of their officers and employees and their dependents.

(2) State employees, as defined in 2-18-809, may participate in such state employee group benefit plans as are provided for under part 8 of this chapter.

(3) For state officers and employees, the premiums required from time to time to maintain the insurance in force shall be paid by the insured officers and employees, and the auditor shall deduct the premiums from the salary or wages of each officer or employee who elects to become insured, on the officer's or employee's written order, and issue his warrant therefor to the insurer.

(4) For the purpose of this section, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health or the services of hospitals, clinics, or sanitariums or both professional and hospital services shall be construed as group insurance and the dues payable under such plans shall be construed as premiums therefor.

History: (1)En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977; Sec. 11-1024, R.C.M. 1947; (2), (3)En. Sec. 1, Ch. 248, L. 1963; Sec. 40-3905.1, R.C.M. 1947; R.C.M. 1947, 11-1024(1), 40-3905.1; amd. Sec. 31, Ch. 184, L. 1979; amd. Sec. 11, Ch. 555, L. 1979.

2-18-703. Contributions. (1) Each agency as defined in 2-18-601 shall contribute the amount specified in this section towards the group benefits cost.

(2) For employees defined in 2-18-701 other than members of collective bargaining units, and for members of the legislature, the employer contribution for group benefits shall be $50 per month for the fiscal year ending June 30, 1980, and $60 per month for each fiscal year thereafter. Permanent part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution as wages.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 per month.

(4) Unused employer contributions for any state employee shall be transferred to an account established for this purpose by the department and upon such transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

History: En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977; R.C.M. 1947, 11-1024(2); amd. Sec. 13, Ch. 678, L. 1979.

2-18-704. Mandatory provisions. (1) An insurance contract or plan issued after June 30, 1977, under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions provided by law to remain a member of the group until he becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless he is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless he is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) A person electing to remain a member of the group under subsection (1) must pay the full premium for his coverage and for that of his covered dependents.

History: En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977; R.C.M. 1947, 11-1024(3), (4).

Part 8

State Group Insurance

2-18-801 through 2-18-807. Repealed. Sec. 14, Ch. 555, L. 1979.

2-18-808. Purpose. The purpose of this part is to establish a program under which the state may provide state employees with adequate group hospitalization, health, medical, disability, life, and other related group benefits in an efficient manner and at an affordable cost.

History: En. Sec. 1, Ch. 555, L. 1979.

Compiler's Comments

Codification. Sec. 13, Ch. 555, L. 1979, provided in part: "Sections 1, 2, and 4 through 10 of this act are intended to be codified as an integral part of Title 2, chapter 18, part 8, and the provisions contained in Title 2, chapter 18, part 8, apply to sections 1, 2, and 4 through 10."

Effective date. Sec. 15, Ch. 555, L. 1979, provided: "This act shall be effective immediately on passage and approval." Approved April 12, 1979.

2-18-809. Definitions. As used in this part, the following definitions apply:

(1) "Advisory council" means the state employee group benefits advisory council provided for in 2-15-1016.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "State employee" means an employee of the state, specifically including a member or employee of the legislative branch of state government. The term "state employee" does not include employees of counties, cities, towns, school districts, or the Montana university system.

(4) "Group benefits" means group hospitalization, health, medical, surgical, disability, life, and other similar and related group benefits provided to officers and employees of the state. The term "group benefits" does not include casualty insurance, defined in 33-1-206; marine insurance, defined in 33-1-209; property insurance, defined in 33-1-210; surety insurance, defined in 33-1-211; and title insurance, defined in 33-1-212.

History: En. Sec. 2, Ch. 555, L. 1979.

2-18-810. Functions of advisory council. (1) The department shall meet and consult with the advisory council before negotiating, contracting, or otherwise modifying state employee group benefit plans.

(2) The advisory council shall meet quarterly to review the existing state employee group benefit plans, to review claims problems, and to advise the department on state employee group benefit matters.

History: En. Sec. 4, Ch. 555, L. 1979.

2-18-811. General duties of the department. The department shall:

(1) adopt rules for the conduct of its business under this part and to carry out the purposes of this part;

(2) negotiate and administer contracts for state employee group benefit plans;

(3) design state employee group benefit plans, establish specifications for bids, and make recommendations for acceptance or rejection of bids;

(4) prepare an annual report which describes the state employee group benefit plans being administered, details the historical and projected program costs and the status of reserve funds, and makes recommendations, if any, for change in existing state employee group benefit plans; and

(5) prior to each legislative session, perform or obtain an analysis of rate adequacy of all state employee group benefit plans administered under this part. The department shall make copies of the report available to the legislature.

History: En. Sec. 5, Ch. 555, L. 1979.

2-18-812. Alternatives to conventional insurance for providing state employee group benefits authorized — requirements. The department may establish alternatives to conventional insurance for providing state employee group benefits. The requirements for providing alternatives to conventional insurance are as follows:

(1) The department must maintain state employee group benefit plans on an actuarially sound basis.

(2) The department must maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of state employee group benefit plans.

(3) The department must deposit all reserve funds and premiums paid to a state employee group benefit plan.

(4) The department must deposit income earned from the investment of a state employee group benefit plan's reserve fund into the account established under subsection (3) of this section in order to offset the costs of administering the plan.

(5) The department shall, prior to implementation of any alternative to conventional insurance, present to the advisory council the evidence upon which the department has concluded that the alternative method will be more efficient, less costly, or otherwise superior to contracting for conventional insurance. The department may not implement any full self insurance alternative prior to July 1, 1981.

(6) The provisions of Title 33 shall not apply to the department when exercising the powers and duties provided for in this section.

History: En. Sec. 6, Ch. 555, L. 1979.

2-18-813. Combining existing employee groups authorized. The department may combine existing state employee groups into larger groups for the purpose of establishing state employee group benefit plans on behalf of the combined groups. The department may also combine state employees into a single group for purposes of state employee group benefits under this part.

History: En. Sec. 7, Ch. 555, L. 1979.

2-18-814. Administrative costs. The department shall include the costs of administering and negotiating state employee group benefit plans established under this part, as well as the costs of hiring necessary consultants, actuaries, and auditors under this part, as part of the cost for state employee group benefits.

History: En. Sec. 8, Ch. 555, L. 1979.

2-18-815. Transfer of authority of board of regents authorized. (1) The board of regents of higher education may transfer its authority for providing group benefits for employees of the Montana university system to the department.

(2) Upon transfer of the board of regents' authority as provided in (1) of this section, group benefit plans for employees of the Montana university system are subject to the provisions of this part.

History: **En. Sec. 9, Ch. 555, L. 1979.**

2-18-816. Annual audits of group benefit plans required. The department shall have the state employee group benefit plans established under this part, whether established on a self-funded basis or not, audited annually by either the legislative auditor or an independent certified public accountant.

History: **En. Sec. 10, Ch. 555, L. 1979.**

Part 9 reserved

Part 10

Grievance Procedures

2-18-1001. Highway department personnel grievances — hearing. (1) An employee of the department of highways aggrieved by a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action and who has exhausted all other administrative remedies is entitled to a hearing before the board of personnel appeals, under the provisions of a grievance procedure to be prescribed by the board, for resolution of the grievance.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the department of highways against an aggrieved employee because the employee has filed or attempted to file a grievance with the board shall also be basis for a grievance and shall entitle the employee to a hearing before the board for resolution.

History: **En. 32-2505.1 by Sec. 1, Ch. 377, L. 1975; Sec. 32-2505.1, R.C.M. 1947; En. 32-2505 by Sec. 2, Ch. 28, L. 1974; Sec. 32-2505, R.C.M. 1947; R.C.M. 1947, 32-2505(part), 32-2505.1.**

2-18-1002. Grievance procedure — hearing — order. (1) The board of personnel appeals provided for in 2-15-1705 shall hear grievances of personnel of the department of highways.

(2) If upon the preponderance of the evidence taken at the hearing the board is of the opinion that the employee is aggrieved, it may issue an order to the department of highways requiring such action of the department as will resolve the employee's grievance. In any hearing the board is not bound by statutory or common-law rules of evidence.

History: **(1)En. 32-2505 by Sec. 2, Ch. 28, L. 1974; Sec. 32-2505, R.C.M. 1947; (2)En. 32-2505.2 by Sec. 2, Ch. 377, L. 1975; Sec. 32-2505.2, R.C.M. 1947; R.C.M. 1947, 32-2505(part), 32-2505.2.**

2-18-1003. Enforcement of board order — petition in district court. The board or the aggrieved employee may petition for the enforcement of the board's order and for appropriate temporary relief and shall file in the district court the record of the proceedings. Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing. After the hearing, the district court shall issue its order granting such temporary or permanent relief as it considers just and proper. No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

History: En. 32-2505.3 by Sec. 3, Ch. 377, L. 1975; R.C.M. 1947, 32-2505.3.

2-18-1004 through 2-18-1010 reserved.

2-18-1011. Classification or compensation grievance — retaliation — hearing on complaint. (1) An employee or his representative affected by the operation of parts 1 through 3 of this chapter, is entitled to file a complaint with the board of personal appeals provided for in 2-15-1705 and to be heard under the provisions of a grievance procedure to be prescribed by the board.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the agency for which the employee works or by any other agency of state government against an employee because the employee has filed or attempted to file a complaint with the board shall also be basis for a complaint and shall entitle the employee to file a complaint with the board and to be heard under the provisions of the grievance procedure prescribed by the board.

(3) An action attempting to revise the class specifications of or series of class specifications involving an employee exercising a right conferred by 2-18-1011 through 2-18-1013 in a way which would adversely affect the employee prior to final resolution or entry of a final order with respect thereto is presumed to be an interference, restraint, coercion, or retaliation prohibited by subsection (2) of this section unless such review was commenced or scheduled prior to filing of the appeal and was not prompted by the grievance appealed from. The presumption is rebuttable.

History: En. 82A-1014 by Sec. 15, Ch. 440, L. 1973; amd. Sec. 1, Ch. 47, L. 1974; amd. Sec. 1, Ch. 378, L. 1975; amd. Sec. 1, Ch. 545, L. 1977; R.C.M. 1947, 82A-1014(part).

2-18-1012. Grievance procedure. If upon the preponderance of the evidence taken at the hearing the board is of the opinion that the employee is aggrieved, it may issue an order to the appropriate agency or agencies of state government requiring such action as will resolve the employee's grievance. In any hearing the board is not bound by statutory or common-law rules of evidence.

History: En. 82A-1014 by Sec. 15, Ch. 440, L. 1973; amd. Sec. 1, Ch. 47, L. 1974; amd. Sec. 1, Ch. 378, L. 1975; amd. Sec. 1, Ch. 545, L. 1977; R.C.M. 1947, 82A-1014(part).

2-18-1013. Enforcement of board order — petition to district court. The board or the employee may petition for the enforcement of the board's order and for appropriate temporary relief and shall file in the district court the record of the proceedings. Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing. After the hearing, the district court shall issue its order granting such temporary or permanent relief as it considers just and proper. No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

History: En. 82A-1014 by Sec. 15, Ch. 440, L. 1973; amd. Sec. 1, Ch. 47, L. 1974; amd. Sec. 1, Ch. 378, L. 1975; amd. Sec. 1, Ch. 545, L. 1977; R.C.M. 1947, 82A-1014(4)(d).

CHAPTER 19

TERMINATION OF STATE AGENCIES

Part 1 — Procedure

Section
2-19-101. Definitions.
2-19-102. Closing out defunct state agencies — procedures.

Part 1

Procedure

2-19-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of administration created in 2-15-1001.

(2) "State agency" means any state office, board, bureau, commission, department, or agency but does not include any agency operated by a city, town, county, school district, or other political subdivision.

History: En Sec. 1, Ch. 333, L. 1979.

2-19-102. Closing out defunct state agencies — procedures. Unless otherwise provided by law, the following procedures apply whenever a state agency is terminated by operation of law, is abolished by executive or legislative action, ceases to function, or otherwise becomes defunct:

(1) The department becomes the receiver of all real and personal property of the agency, including all books, records, and accounts, and shall determine all remaining assets and liabilities of the defunct agency. The department shall inventory all personal property of the agency and may reassign the property to other state agencies or otherwise dispose of it as provided in Title 18, chapter 6, part 1.

(2) The department must pay any creditors of the defunct state agency from the funds remaining in the agency's current budget. However, if insufficient funds remain to settle all outstanding accounts, then the department shall prorate all claims in the ratio of their amount to the total cash available. The department shall seek a supplemental appropriation from the next

regular session of the legislature to pay the remaining balance of the creditors' claims. Any funds remaining after payment to all creditors of the defunct agency must be deposited by the department into the general fund.

History: En Sec. 2, Ch. 333, L. 1979.

TITLE 3

JUDICIARY, COURTS

Ch.
1. Courts and Judicial Officers Generally.
2. Supreme Court.
   Chapters 3 and 4 reserved.
5. District Courts.
6. Municipal Courts.
7. Water Courts.
   Chapters 8 and 9 reserved.
10. Justices' Courts.
11. City Courts.
12. Small Claims Courts.
   Chapters 13 and 14 reserved.
15. Juries and Jurors.

CHAPTER 1

COURTS AND JUDICIAL OFFICERS GENERALLY

Part 1 — Courts—Definitions and General Powers

Section
3-1-101. The several courts of this state.
3-1-102. Courts of record.
Sections 3-1-103 through 3-1-110 reserved.
3-1-111. Powers respecting conduct of business.
3-1-112. Rules for courts of record.
3-1-113. Means to carry jurisdiction into effect.

Part 2 — Seals of Courts

3-1-201. What courts have seals.
3-1-202. Seal of supreme court.
3-1-203. Seals of district courts.
3-1-204. Clerk of court to keep seal.
3-1-205. Seal of municipal court.
3-1-206. Documents requiring seals.

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3-1-301. Days on which courts may be held.
3-1-302. Nonjudicial days.
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3-1-312. Sittings of court to be public.
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3-1-315. Abbreviations and figures.
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3-1-402. Powers of judicial officers as to conduct of proceedings.
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3-1-404. Taking acknowledgments and affidavits.
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3-1-503. Effect of violation.
3-1-504. Reentry on property after eviction.
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3-1-512. Procedure — contempt not in presence of the court.
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3-1-518. Hearing.
3-1-519. Penalty.
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3-1-1003. Vacancies.
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3-1-1005. Commission members not eligible for judicial office.
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3-1-1007. Commission to make rules — confidentiality of proceedings.

3-1-1008. Quorum.
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3-1-1101. Creation and composition of commission.
3-1-1102. Staggered terms of members.
3-1-1103. Terminated membership — vacancies.
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3-1-1110. Procedure when convicted of crime.
3-1-1111. Orders for retirement or removal.

Part 1

Courts — Definitions and General Powers

3-1-101. The several courts of this state. The following are courts of justice of this state:

(1) the court of impeachment, which is the senate;
(2) the supreme court;
(3) the district courts;
(4) the municipal courts;
(5) the justices' courts;
(6) the city courts and such other courts of limited jurisdiction as the legislature may establish in any incorporated city or town.

History: En. Secs. 2, 6, C. Civ. Proc. 1895; re-en. Secs. 6238, 6240, Rev. C. 1907; re-en. Secs. 8784, 8786, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 33, 36; re-en. Secs. 8784, 8786, R.C.M. 1935; R.C.M. 1947, 93-101, 93-103(part); amd. Sec. 1, Ch. 21, L. 1979; amd. Sec. 5, Ch. 466, L. 1979.

3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, and the municipal courts are courts of record.

History: En. Sec. 3, C. Civ. Proc. 1895; re-en. Sec. 6239, Rev. C. 1907; re-en. Sec. 8785, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 34; re-en. Sec. 8785, R.C.M. 1935; amd. Sec. 11, Ch. 429, L. 1977; R.C.M. 1947, 93-102.

3-1-103 through 3-1-110 reserved.

3-1-111. Powers respecting conduct of business. Every court has power to:

(1) preserve and enforce order in its immediate presence;
(2) enforce order in the proceedings before it or before a person or persons empowered to conduct a judicial investigation under its authority;
(3) provide for the orderly conduct of proceedings before it or its officers;

(4) compel obedience to its judgments, orders, and process and to the orders of a judge out of court in an action or proceeding pending therein;

(5) control, in furtherance of justice, the conduct of its ministerial officers and of all other persons in any manner connected with a judicial proceeding before it in every other matter appertaining thereto;

(6) compel the attendance of persons to testify in an action or proceeding pending therein in the cases and manner provided in this code;

(7) administer oaths in an action or proceeding pending therein and in all other cases where it may be necessary in the exercise of its powers and duties;

(8) amend and control its process and orders so as to make them conformable to law and justice.

History: En. Sec. 452, p. 134, Bannack Stat.; re-en. Sec. 609, p. 159, Cod. Stat. 1871; re-en. Sec. 529, p. 178, L. 1877; re-en. Sec. 529, 1st Div. Rev. Stat. 1879; re-en. Sec. 546, 1st Div. Comp. Stat. 1887; amd. Sec. 110, C. Civ. Proc. 1895; re-en. Sec. 6292, Rev. C. 1907; re-en. Sec. 8844, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 128; re-en. Sec. 8844, R.C.M. 1935; R.C.M. 1947, 93-501.

3-1-112. Rules for courts of record. (1) Every court of record may make rules, not inconsistent with the laws of this state, for its own government and the government of its officers. Such rules must not impose any tax or charge upon any legal proceedings or give any allowance to any officers for services.

(2) In case of the failure or refusal of any district court to adopt and promulgate rules of court, the supreme court may, upon the application of any interested person, adopt and promulgate rules for the government of such court. When adopted and promulgated, such rules shall remain in full force and effect until modified or repealed by the authority adopting them.

(3) Rules adopted by any court take effect 30 days after their publication.

(4) Any judge who shall fail or refuse to comply with and carry out in good faith the rules of court adopted by the supreme court, as herein provided for, shall be guilty of a contempt of the supreme court.

History: Ap. p. Sec. 111, C. Civ. Proc. 1895; re-en. Sec. 6293, Rev. C. 1907; amd. Sec. 1, Ch. 6, L. 1915; re-en. Sec. 8845, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 129; re-en. Sec. 8845, R.C.M. 1935; Sec. 93-502, R.C.M. 1947; Ap. p. Sec. 112, C. Civ. Proc. 1895; re-en. Sec. 6294, Rev. C. 1907; re-en. Sec. 8846, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 130; re-en. Sec. 8846, R.C.M. 1935; Sec. 93-503, R.C.M. 1947; R.C.M. 1947, 93-502, 93-503.

3-1-113. Means to carry jurisdiction into effect. When jurisdiction is, by the constitution or any statute, conferred on a court or judicial officer, all the means necessary for the exercise of such jurisdiction are also given. In the exercise of this jurisdiction, if the course of proceeding is not specifically pointed out by this code, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code.

History: En. Sec. 205, C. Civ. Proc. 1895; re-en. Sec. 6329, Rev. C. 1907; re-en. Sec. 8882, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 187; re-en. Sec. 8882, R.C.M. 1935; R.C.M. 1947, 93-1106; amd. Sec. 2, Ch. 21, L. 1979.

Part 2

Seals of Courts

3-1-201. What courts have seals. Each of the following courts shall have a seal:

(1) the supreme court;
(2) the district courts;
(3) the municipal courts.

History: En. Sec. 462, p. 135, Bannack Stat. re-en. Sec. 585, p. 155, Cod. Stat. 1871; re-en. Sec. 510, p. 174, L. 1877; re-en. Sec. 510, 1st Div. Rev. Stat. 1879; re-en. Sec. 527, 1st Div. Comp. Stat. 1887; amd. Sec. 150, C. Civ. Proc. 1895; re-en. Sec. 6303, Rev. C. 1907; re-en. Sec. 8857, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 147; re-en. Sec. 8857, R.C.M. 1935; R.C.M. 1947, 93-601; amd. Sec. 3, Ch. 21, L. 1979.

3-1-202. Seal of supreme court. The seal of the supreme court is circular in form and not less than 1 ¾ inches in diameter, on which are engraved the words "Supreme Court, State of Montana", with the word "Seal" in the center thereof, which seal must be procured by the clerk of the supreme court at the expense of the state; and an impression thereof, certified to by the clerk, must be filed with the secretary of state.

History: En. Sec. 1, p. 206, L. 1891; re-en. Sec. 151, C. Civ. Proc. 1895; re-en. Sec. 6304, Rev. C. 1907; re-en. Sec. 8858, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 148; re-en. Sec. 8858, R.C.M. 1935; R.C.M. 1947, 93-602.

3-1-203. Seals of district courts. The seals of the district courts are circular, not less than 1 ¾ inches in diameter, and have in the center the word "Seal" and the following inscription surrounding the same: ".... District Court, ... County, Montana", inserting the number of the district and the name of the county; which seal must be procured by the clerk of the court at the expense of the county and an impression thereof, certified by the clerk, filed with the secretary of state.

History: En. Sec. 2, p. 206, L. 1891; re-en. Sec. 152, C. Civ. Proc. 1895; re-en. Sec. 6305, Rev. C. 1907; re-en. Sec. 8859, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 149; re-en. Sec. 8859, R.C.M. 1935; R.C.M. 1947, 93-603.

3-1-204. Clerk of court to keep seal. The clerk of the court must keep the seal thereof.

History: En. Sec. 153, C. Civ. Proc. 1895; re-en. Sec. 6306, Rev. C. 1907; re-en. Sec. 8860, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 152; re-en. Sec. 8860, R.C.M. 1935; R.C.M. 1947, 93-604.

3-1-205. Seal of municipal court. The municipal court shall have and use a seal, which seal shall be similar to the seal of the district court, except as to the name of the court.

History: En. Sec. 6, Ch. 177, L. 1935; re-en. Sec. 5094.6, R.C.M. 1935; R.C.M. 1947, 11-1706(part).

3-1-206. Documents requiring seals. The seal of a court need not be affixed to any proceeding therein or document except to:

(1) a writ;

(2) the certificate of probate of a will or of the appointment of an executor, administrator, or guardian;

(3) the authentication of a copy of a record or other proceeding of a court or an officer thereof or of a copy of a document on file in the office of the clerk.

History: En. Sec. 464, p. 135, Bannack Stat.; repealed Sec. 751, p. 187, Cod. Stat. 1871; en. Sec. 154, C. Civ. Proc. 1895; re-en. Sec. 6307, Rev. C. 1907; re-en. Sec. 8861, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 153; re-en. Sec. 8861, R.C.M. 1935; R.C.M. 1947, 93-605.

Part 3

General Rules Regarding Procedure

3-1-301. Days on which courts may be held. Courts of justice may be held and judicial business transacted on any day, except as provided in 3-1-302.

History: En. Sec. 466, p. 136, Bannack Stat.; re-en. Sec. 588, p. 155, Cod. Stat. 1871; re-en. Sec. 513, p. 174, L. 1877; re-en. Sec. 513, 1st Div. Rev. Stat. 1879; re-en. Sec. 530, 1st Div. Comp. Stat. 1887; re-en. Sec. 120, C. Civ. Proc. 1895; re-en. Sec. 6295, Rev. C. 1907; re-en. Sec. 8849, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 133; re-en. Sec. 8849, R.C.M. 1935; R.C.M. 1947, 93-506.

3-1-302. Nonjudicial day. (1) No court may be open nor may any judicial business be transacted on legal holidays, as provided for in 1-1-216, and on a day appointed by the president of the United States or by the governor of this state for a public fast, thanksgiving, or holiday, except for the following purposes:

(a) to give, upon its request, instructions to a jury when deliberating on its verdict;

(b) to receive a verdict or discharge a jury;

(c) for the exercise of the powers of a magistrate in a criminal action or in a proceeding of a criminal nature.

(2) Injunctions, writs of prohibition, and habeas corpus may be issued and served on any day.

History: En. Sec. 467, p. 136, Bannack Stat.; re-en. Sec. 589, p. 155, Cod. Stat. 1871; re-en. Sec. 514, p. 174, L. 1877; re-en. Sec. 514, 1st Div. Rev. Stat. 1879; re-en. Sec. 531, 1st Div. Comp. Stat. 1887; amd. Sec. 121, C. Civ. Proc. 1895; re-en. Sec. 6296, Rev. C. 1907; re-en. Sec. 8850, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 134; re-en. Sec. 8850, R.C.M. 1935; amd. Sec. 14, Ch. 420, L. 1975; amd. Sec. 28, Ch. 344, L. 1977; R.C.M. 1947, 93-507.

3-1-303. Adjournments from nonjudicial days. If any day mentioned in 3-1-302 happens to be the day appointed for the holding or sitting of a court or to which it is adjourned, it must be considered appointed for or adjourned to the next day.

History: En. Sec. 467, p. 136, Bannack Stat.; amd. Sec. 589, p. 155, Cod. Stat. 1871; re-en. Sec. 514, p. 174, L. 1877; re-en. Sec. 514, 1st Div. Rev. Stat. 1879; re-en. Sec. 531, 1st Div. Comp. Stat. 1887; amd. Sec. 122, C. Civ. Proc. 1895; re-en. Sec. 6297, Rev. C. 1907; re-en. Sec. 8851, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 135; re-en. Sec. 8851, R.C.M. 1935; R.C.M. 1947, 93-508.

3-1-304. Adjournment for absence of judge. If no judge attends before noon on the day appointed for the holding or sitting of a court or on a day to which it may have been adjourned, the sheriff or clerk may adjourn the same until the next day at 10 a.m. If no judge attends on that day before noon, the sheriff or clerk may adjourn the same until the following day at the same hour and so on from day to day for 6 days unless the judge, by written order or telegram, directs it to be adjourned to some day certain, fixed in said order or telegram, in which case it must be so adjourned.

History: En. Sec. 589, p. 155, Cod. Stat. 1871; re-en. Sec. 514, p. 174, L. 1877; re-en. Sec. 514, 1st Div. Rev. Stat. 1879; re-en. Sec. 531, 1st Div. Comp. Stat. 1887; amd. Sec. 130, C. Civ. Proc. 1895; re-en. Sec. 6298, Rev. C. 1907; re-en. Sec. 8852, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 139; re-en. Sec. 8852, R.C.M. 1935; R.C.M. 1947, 93-509.

3-1-305. Adjournment until next regular term. If no judge attends for 6 days and no written order or telegram be made or sent as provided in

3-1-304, the sheriff or clerk must adjourn the term until the time appointed for the holding of the next regular term.

History: En. Sec. 589, p. 155, Cod. Stat. 1871; re-en. Sec. 514, p. 174, L. 1877; re-en. Sec. 514, 1st Div. Rev. Stat. 1879; re-en. Sec. 531, 1st Div. Comp. Stat. 1887; amd. Sec. 131, C. Civ. Proc. 1895; re-en. Sec. 6299, Rev. C. 1907; re-en. Sec. 8853, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 140; re-en. Sec. 8853, R.C.M. 1935; R.C.M. 1947, 93-510.

3-1-306 through 3-1-310 reserved.

3-1-311. Proceedings not affected by vacancy in office. No proceeding in any court of justice in an action or special proceeding pending therein is affected by a vacancy in the office of all or any of the judges thereof.

History: En. Sec. 460, p. 135, Bannack Stat.; re-en. Sec. 583, p. 155, Cod. Stat. 1871; re-en. Sec. 508, p. 174, L. 1877; re-en. Sec. 508, 1st Div. Rev. Stat. 1879; re-en. Sec. 525, 1st Div. Comp. Stat. 1887; amd. Sec. 202, C. Civ. Proc. 1895; re-en. Sec. 6326, Rev. C. 1907; re-en. Sec. 8879, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 184; re-en. Sec. 8879, R.C.M. 1935; R.C.M. 1947, 93-1103.

3-1-312. Sittings of court to be public. The sittings of every court of justice must be public, except as provided in 3-1-313.

History: En. Sec. 450, p. 134, Bannack Stat.; re-en. Sec. 607, p. 159, Cod. Stat. 1871; re-en. Sec. 527, p. 178, L. 1877; re-en. Sec. 527, 1st Div. Rev. Stat. 1879; re-en. Sec. 544, 1st Div. Comp. Stat. 1887; re-en. Sec. 100, C. Civ. Proc. 1895; re-en. Sec. 6290, Rev. C. 1907; re-en. Sec. 8847, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 124; re-en. Sec. 8847, R.C.M. 1935; R.C.M. 1947, 93-504.

3-1-313. Sittings of court — when private. (1) In an action for dissolution of marriage, criminal conversation, or seduction, the court may direct the trial of any issue of fact joined therein to be private and exclude all persons except the officers of the court, the parties, their witnesses, and counsel.

(2) During the examination of a witness in any cause, the court may, in its discretion, exclude some or all of the other witnesses in the cause.

History: En. Sec. 451, p. 134, Bannack Stat.; re-en. Sec. 608, p. 159, Cod. Stat. 1871; re-en. Sec. 528, p. 178, L. 1877; re-en. Sec. 528, 1st Div. Rev. Stat. 1879; re-en. Sec. 545, 1st Div. Comp. Stat. 1887; amd. Sec. 101, C. Civ. Proc. 1895; re-en. Sec. 6291, Rev. C. 1907; re-en. Sec. 8848, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 125; re-en. Sec. 8848, R.C.M. 1935; amd. Sec. 23, Ch. 33, L. 1977; amd. Sec. 27, Ch. 344, L. 1977; R.C.M. 1947, 93-505.

3-1-314. Proceedings to be in English language. Every written proceeding in a court of justice in this state must be in the English language, and judicial proceedings must be conducted, preserved, and published in no other.

History: En. Sec. 461, p. 135, Bannack Stat.; re-en. Sec. 584, p. 155, Cod. Stat. 1871; re-en. Sec. 509, p. 174, L. 1877; re-en. Sec. 509, 1st Div. Rev. Stat. 1879; re-en. Sec. 526, 1st Div. Comp. Stat. 1887; amd. Sec. 203, C. Civ. Proc. 1895; re-en. Sec. 6327, Rev. C. 1907; re-en. Sec. 8880, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 185; re-en. Sec. 8880, R.C.M. 1935; R.C.M. 1947, 93-1104.

3-1-315. Abbreviations and figures. Such abbreviations as are in common use may be used, and numbers may be expressed by figures or numerals in the customary manner.

History: En. Sec. 461, p. 135, Bannack Stat.; re-en. Sec. 584, p. 155, Cod. Stat. 1871; re-en. Sec. 509, p. 174, L. 1877; re-en. Sec. 509, 1st Div. Rev. Stat. 1879; re-en. Sec. 526, 1st Div. Comp. Stat. 1887; amd. Sec. 204, C. Civ. Proc. 1895; re-en. Sec. 6328, Rev. C. 1907; re-en. Sec. 8881, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 186; re-en. Sec. 8881, R.C.M. 1935; R.C.M. 1947, 93-1105.

3-1-316. Repealed. Sec. 13, Ch. 245, L. 1979.

Part 4

Powers of Judicial Officers

3-1-401. Powers of judges out of court. A justice or judge may exercise out of court all the powers expressly conferred upon a justice or judge, as contradistinguished from the court.

History: En. Sec. 190, C. Civ. Proc. 1895; re-en. Sec. 6319, Rev. C. 1907; re-en. Sec. 8872, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 176; re-en. Sec. 8872, R.C.M. 1935; R.C.M. 1947, 93-1001.

3-1-402. Powers of judicial officers as to conduct of proceedings. Every judicial officer has power to:

(1) preserve and enforce order in his immediate presence and in proceedings before him when he is engaged in the performance of official duty;

(2) compel obedience to his official orders, as provided in this code;

(3) compel the attendance of persons to testify in a proceeding before him in the cases and manner provided in this code;

(4) administer oaths to persons in a proceeding pending before him and in all other cases where it may be necessary in the exercise of his powers and duties.

History: En. Sec. 191, C. Civ. Proc. 1895; re-en. Sec. 6320, Rev. C. 1907; re-en. Sec. 8873, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 177; re-en. Sec. 8873, R.C.M. 1935; R.C.M. 1947, 93-1002.

3-1-403. Power to punish for contempt. For the effectual exercise of the powers conferred by 3-1-402, a judicial officer may punish for contempt in the cases provided in this code.

History: En. Sec. 192, C. Civ. Proc. 1895; re-en. Sec. 6321, Rev. C. 1907; re-en. Sec. 8874, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 178; re-en. Sec. 8874, R.C.M. 1935; R.C.M. 1947, 93-1003.

3-1-404. Taking acknowledgments and affidavits. Each of the justices of the supreme court and judges of the district courts has power in any part of the state, and every justice of the peace within his county, to take and certify:

(1) the proof and acknowledgment of a conveyance of real property or of any other written instrument;

(2) the acknowledgment of satisfaction of a judgment of any court;

(3) an affidavit or deposition to be used in this state.

History: En. Sec. 459, Bannack Stat.; re-en. Sec. 582, p. 155, Cod. Stat. 1871; re-en. Sec. 507, p. 174, L. 1877; re-en. Sec. 507, 1st Div. Rev. Stat. 1879; re-en. Sec. 524, 1st Div. Comp. Stat. 1887; amd. Sec. 193, C. Civ. Proc. 1895; re-en. Sec. 6322, Rev. C. 1907; re-en. Sec. 8875, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 179; re-en. Sec. 8875, R.C.M. 1935; R.C.M. 1947, 93-1004.

3-1-405. Certificate of authenticity of justice's court's certificate of acknowledgment. The certificate of proof or acknowledgment, if made before a justice of the peace, when used in any county other than that in which he resides, must be accompanied by a certificate, under the hand and seal of the clerk of the county in which the justice resides, setting forth that such justice, at the time of taking such proof or acknowledgment, was authorized to take the same and that the clerk is acquainted with his handwriting and believes that the signature to the original certificate is genuine.

History: En. Sec. 194, C. Civ. Proc. 1895; re-en. Sec. 6323, Rev. C. 1907; re-en. Sec. 8876, R.C.M. 1921; re-en. Sec. 8876, R.C.M. 1935; R.C.M. 1947, 93-1005.

Part 5

Contempts

3-1-501. What acts or omissions are contempts. (1) The following acts or omissions in respect to a court of justice or proceedings therein are contempts of the authority of the court:

(a) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(b) a breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding;

(c) misbehavior in office or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service;

(d) deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding;

(e) disobedience of any lawful judgment, order, or process of the court;

(f) assuming to be an officer, attorney, or counsel of a court and acting as such without authority;

(g) rescuing any person or property in the custody of an officer by virtue of an order or process of such court;

(h) unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial;

(i) any other unlawful interference with the process or proceedings of a court;

(j) disobedience of a subpoena duly served or refusing to be sworn or answer as a witness;

(k) when summoned as a juror in a court, neglecting to attend or serve as such or improperly conversing with a party to an action to be tried at such court or with any other person in relation to the merits of such action or receiving a communication from a party or other person in respect to it without immediately disclosing the same to the court;

(l) disobedience by an inferior tribunal, magistrate, or officer of the lawful judgment, order, or process of a superior court or proceeding in an action or special proceeding contrary to law after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate, or officer.

(2) Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer.

History: En. Sec. 396, p. 125, Bannack Stat.; re-en. Sec. 455, p. 226, L. 1867; re-en. Sec. 531, p. 144, Cod. Stat. 1871; en. Sec. 566, p. 185, L. 1877; re-en. Sec. 566, 1st Div. Rev. Stat. 1879; re-en. Sec. 584, 1st Div. Comp. Stat. 1887; re-en. Sec. 2170, C. Civ. Proc. 1895; re-en. Sec. 7309, Rev. C. 1907; re-en. Sec. 9908, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1209; re-en. Sec. 9908, R.C.M. 1935; R.C.M. 1947, 93-9801.

3-1-502. Order refused — subsequent applications prohibited. (1) If an application for an order, made to a judge of a court in which the action or proceeding is pending, is refused in whole or in part or is granted conditionally, no subsequent application for the same order shall be made to any other judge, except of a higher court.

(2) Nothing in this section refers to motions refused for informality in the papers or proceedings necessary to obtain the order or to motions refused with liberty to renew the same.

History: En. Sec. 457, p. 135, Bannack Stat.; re-en. Sec. 614, p. 159, Cod. Stat. 1871; re-en. Sec. 534, p. 179, L. 1877; re-en. Sec. 534, 1st Div. Rev. Stat. 1879; re-en. Sec. 551, 1st Div. Comp. Stat. 1887; amd. Sec. 200, C. Civ. Proc. 1895; re-en. Sec. 6324, Rev. C. 1907; re-en. Sec. 8877, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 182; re-en. Sec. 8877, R.C.M. 1935; R.C.M. 1947, 93-1101.

3-1-503. Effect of violation. A violation of 3-1-502 may be punished as a contempt. An order made contrary thereto may be revoked by the judge who made it or vacated by a judge of the court in which the action or proceeding is pending.

History: En. Sec. 458, p. 135, Bannack Stat.; re-en. Sec. 615, p. 159, Cod. Stat. 1871; re-en. Sec. 535, p. 179, L. 1877; re-en. Sec. 535, 1st Div. Rev. Stat. 1879; re-en. Sec. 552, 1st Div. Comp. Stat. 1887; amd. Sec. 201, C. Civ. Proc. 1895; re-en. Sec. 6325, Rev. C. 1907; re-en. Sec. 8878, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 183; re-en. Sec. 8878, R.C.M. 1935; R.C.M. 1947, 93-1102.

3-1-504. Reentry on property after eviction. Every person dispossessed of or ejected from or out of any real property by the judgment or process of any court of competent jurisdiction and who, not having right so to do, reenters into or upon or takes possession of any such real property or induces or procures any person not having a right so to do or aids or abets him therein is guilty of a contempt of the court by which such judgment was rendered or from which such process issued. Upon conviction for such contempt, the court or justice of the peace must immediately issue an alias process directed to the proper officer and requiring him to restore the party entitled to the possession of such property, under the original judgment or process, to such possession.

History: En. Sec. 567, p. 186, L. 1877; re-en. Sec. 567, 1st Div. Rev. Stat. 1879; re-en. Sec. 585, 1st Div. Comp. Stat. 1887; re-en. Sec. 2171, C. Civ. Proc. 1895; re-en. Sec. 7310, Rev. C. 1907; re-en. Sec. 9909, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1210; re-en. Sec. 9909, R.C.M. 1935; R.C.M. 1947, 93-9802.

3-1-505 through 3-1-510 reserved.

3-1-511. Procedure — contempt committed in the presence of the court. When a contempt is committed in the immediate view and presence of the court or judge at chambers, it may be punished summarily, for which an order must be made reciting the facts as occurring in such immediate view and presence and adjudging that the person proceeded against is thereby guilty of a contempt and that he be punished as therein prescribed.

History: En. Sec. 397, p. 125, Bannack Stat.; en. Sec. 456, p. 226, L. 1867; re-en. Sec. 532, p. 145, Cod. Stat. 1871; re-en. Sec. 568, p. 186, L. 1877; re-en. Sec. 568, 1st Div. Rev. Stat. 1879; re-en. Sec. 586, 1st Div. Comp. Stat. 1887; amd. Sec. 2172, C. Civ. Proc. 1895; re-en. Sec. 7311, Rev. C. 1907; re-en. Sec. 9910, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1211; re-en. Sec. 9910, R.C.M. 1935; R.C.M. 1947, 93-9803(part).

3-1-512. Procedure — contempt not in presence of the court. When the contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit of the facts constituting the contempt or a statement of the facts by the referees or arbitrators or other judicial officer shall be presented to the court or judge.

History: En. Sec. 397, p. 125, Bannack Stat.; en. Sec. 456, p. 226, L. 1867; re-en. Sec. 532, p. 145, Cod. Stat. 1871; re-en. Sec. 568, p. 186, L. 1877; re-en. Sec. 568, 1st Div. Rev. Stat. 1879; re-en.

Sec. 586, 1st Div. Comp. Stat. 1887; amd. Sec. 2172, C. Civ. Proc. 1895; re-en. Sec. 7311, Rev. C. 1907; re-en. Sec. 9910, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1211; re-en. Sec. 9910, R.C.M. 1935; R.C.M. 1947, 93-9803(part).

3-1-513. Warrant of attachment or commitment. When the contempt is not committed in the immediate view and presence of the court or judge, a warrant of attachment may be issued to bring the person charged to answer or, without a previous arrest, a warrant of commitment may, upon notice or upon an order to show cause, be granted. No warrant of commitment can be issued without such previous attachment to answer or notice or order to show cause. see also 3-1-520

History: En. Sec. 457, p. 226, L. 1867; re-en. Sec. 533, p. 145, Cod. Stat. 1871; re-en. Sec. 568, p. 186, L. 1877; re-en. Sec. 568, 1st Div. Rev. Stat. 1879; re-en. Sec. 586, 1st Div. Comp. Stat. 1887; re-en. Sec. 2173, C. Civ. Proc. 1895; re-en. Sec. 7312, Rev. C. 1907; re-en. Sec. 9911, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1212; re-en. Sec. 9911, R.C.M. 1935; R.C.M. 1947, 93-9804.

3-1-514. Endorsement allowing bail on warrant. Whenever a warrant of attachment is issued pursuant to this part, the court or judge must direct, by an endorsement on such warrant, that the person charged may be left to bail for his appearance in an amount to be specified in such endorsement.

History: En. Sec. 458, p. 226, L. 1867; re-en. Sec. 534, p. 145, Cod. Stat. 1871; re-en. Sec. 569, p. 186, L. 1877; re-en. Sec. 569, 1st Div. Rev. Stat. 1879; re-en. Sec. 587, 1st Div. Comp. Stat. 1887; re-en. Sec. 2174, C. Civ. Proc. 1895; re-en. Sec. 7313, Rev. C. 1907; re-en. Sec. 9912, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1213; re-en. Sec. 9912, R.C.M. 1935; R.C.M. 1947, 93-9805.

3-1-515. Arrest and detention by sheriff. Upon executing the warrant of attachment, the sheriff must keep the person in custody, bring him before the court or judge, and detain him until an order be made in the premises unless the person arrested entitle himself to be discharged as provided in 3-1-516.

History: En. Sec. 459, p. 226, L. 1867; re-en. Sec. 535, p. 145, Cod. Stat. 1871; re-en. Sec. 570, p. 186, L. 1877; re-en. Sec. 570, 1st Div. Rev. Stat. 1879; re-en. Sec. 588, 1st Div. Comp. Stat. 1887; re-en. Sec. 2175, C. Civ. Proc. 1895; re-en. Sec. 7314, Rev. C. 1907; re-en. Sec. 9913, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1214; re-en. Sec. 9913, R.C.M. 1935; R.C.M. 1947, 93-9806.

3-1-516. Bail bond — form and conditions of. When a direction to let the person arrested to bail is contained in the warrant of attachment or endorsed thereon, he must be discharged from the arrest upon executing and delivering to the officer, at any time before the return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on the return of the warrant and abide the order of the court or judge thereupon or they will pay, as may be directed, the sum specified in the warrant or ordered by court or judge.

History: En. Sec. 460, p. 227, L. 1867; re-en. Sec. 536, p. 145, Cod. Stat. 1871; re-en. Sec. 570, p. 187, L. 1877; re-en. Sec. 570, 1st Div. Rev. Stat. 1879; re-en. Sec. 588, 1st Div. Comp. Stat. 1887; re-en. Sec. 2176, C. Civ. Proc. 1895; re-en. Sec. 7315, Rev. C. 1907; re-en. Sec. 9914, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1215; re-en. Sec. 9914, R.C.M. 1935; R.C.M. 1947, 93-9807.

3-1-517. Return of warrant and undertaking. The officer must return the warrant of arrest and undertaking, if any, received by him from the person arrested by the return day specified therein.

History: En. Sec. 461, p. 227, L. 1867; re-en. Sec. 537, p. 145, Cod. Stat. 1871; re-en. Sec. 571, p. 187, L. 1877; re-en. Sec. 571, 1st Div. Rev. Stat. 1879; re-en. Sec. 589, 1st Div. Comp. Stat. 1887;

re-en. Sec. 2177, C. Civ. Proc. 1895; re-en. Sec. 7316, Rev. C. 1907; re-en. Sec. 9915, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1216; re-en. Sec. 9915, R.C.M. 1935; R.C.M. 1947, 93-9808.

3-1-518. Hearing. When the person arrested has been brought up or appeared, the court or judge must proceed to investigate the charge, must hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

History: En. Sec. 399, p. 126, Bannack Stat.; amd. Sec. 462, p. 227, L. 1867; re-en. Sec. 538, p. 145, Cod. Stat. 1871; re-en. Sec. 572, p. 187, L. 1877; re-en. Sec. 572, 1st Div. Rev. Stat. 1879; re-en. Sec. 590, 1st Div. Comp. Stat. 1887; re-en. Sec. 2178, C. Civ. Proc. 1895; re-en. Sec. 7317, Rev. C. 1907; re-en. Sec. 9916, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1217; re-en. Sec. 9916, R.C.M. 1935; R.C.M. 1947, 93-9809.

3-1-519. Penalty. Upon the answer and evidence taken, the court or judge must determine whether the person proceeded against is guilty of the contempt charged. If it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding $500 or he may be imprisoned not exceeding 5 days, or both.

History: En. Sec. 463, p. 227, L. 1867; re-en. Sec. 539, p. 145, Cod. Stat. 1871; re-en. Sec. 573, p. 188, L. 1877; re-en. Sec. 573, 1st Div. Rev. Stat. 1879; re-en. Sec. 591, 1st Div. Comp. Stat. 1887; amd. Sec. 2179, C. Civ. Proc. 1895; re-en. Sec. 7318, Rev. C. 1907; re-en. Sec. 9917, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1218; re-en. Sec. 9917, R.C.M. 1935; R.C.M. 1947, 93-9810.

3-1-520. Imprisonment to compel performance. When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he shall have performed it. In that case, the act must be specified in the warrant of commitment.

History: En. Sec. 400, p. 126, Bannack Stat.; re-en. Sec. 464, p. 227, L. 1867; re-en. Sec. 540, p. 146, Cod. Stat. 1871; re-en. Sec. 574, p. 188, L. 1877; re-en. Sec. 574, 1st Div. Rev. Stat. 1879; re-en. Sec. 592, 1st Div. Comp. Stat. 1887; re-en. Sec. 2180, C. Civ. Proc. 1895; re-en. Sec. 7319, Rev. C. 1907; re-en. Sec. 9918, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1219; re-en. Sec. 9918, R.C.M. 1935; R.C.M. 1947, 93-9811.

3-1-521. Proceedings when party fails to appear. When the warrant of arrest has been returned served, if the person arrested does not appear on the return day, the court or judge may issue another warrant of arrest or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action is the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued and the costs of the proceeding.

History: En. Sec. 467, p. 227, L. 1867; re-en. Sec. 542, p. 146, Cod. Stat. 1871; re-en. Sec. 576, p. 188, L. 1877; re-en. Sec. 576, 1st Div. Rev. Stat. 1879; re-en. Sec. 594, 1st Div. Comp. Stat. 1887; re-en. Sec. 2181, C. Civ. Proc. 1895; re-en. Sec. 7320, Rev. C. 1907; re-en. Sec. 9919, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1220; re-en. Sec. 9919, R.C.M. 1935; R.C.M. 1947, 93-9812.

3-1-522. Illness sufficient excuse — confinement under arrest. (1) Whenever by the provisions of this part an officer is required to keep a person arrested on a warrant of attachment in custody and to bring him before a court or judge, the inability, from illness or otherwise, of the person to attend is sufficient excuse for not bringing him up.

(2) The officer must not confine a person arrested upon a warrant in a prison or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

History: En. Sec. 467, p. 227, L. 1867; re-en. Sec. 543, p. 146, Cod. Stat. 1871; re-en. Sec. 577, p. 188, L. 1877; re-en. Sec. 577, 1st Div. Rev. Stat. 1879; re-en. Sec. 595, 1st Div. Comp. Stat. 1887; re-en. Sec. 2182, C. Civ. Proc. 1895; re-en. Sec. 7321, Rev. C. 1907; re-en. Sec. 9920, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1221; re-en. Sec. 9920, R.C.M. 1935; R.C.M. 1947, 93-9813.

3-1-523. Judgment and orders in contempt cases final. The judgment and orders of the court or judge made in cases of contempt are final and conclusive. There is no appeal, but the action of a district court or judge can be reviewed on a writ of certiorari by the supreme court or a judge thereof and the action of a justice of the peace or other court of limited jurisdiction by the district court or judge of the county in which such justice or judge of such court of limited jurisdiction resides.

History: En. Sec. 468, p. 228, L. 1867; amd. Sec. 544, p. 146, Cod. Stat. 1871; re-en. Sec. 578, p. 188, L. 1877; re-en. Sec. 578, 1st Div. Rev. Stat. 1879; re-en. Sec. 596, 1st Div. Comp. Stat. 1887; en. Sec. 2183, C. Civ. Proc. 1895; re-en. Sec. 7322, Rev. C. 1907; re-en. Sec. 9921, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1222; re-en. Sec. 9921, R.C.M. 1935; R.C.M. 1947, 93-9814; amd. Sec. 6, Ch. 466, L. 1979.

Part 6

Restrictions on Judicial Officers

3-1-601. Certain officers not to practice law or administer estates. (1) No justice or judge of a court of record or clerk of any court may practice law in any court in this state or act as attorney, agent, or solicitor in the prosecution of any claim or application for lands, pensions, or patent rights or other proceedings before any department of the state or general government or any court of the United States during his continuance in office.

(2) Neither the court administrator nor any assistant may practice law in any of the courts of this state while holding his position.

(3) No justice or judge of a court of record may act as administrator or executor of any estate for compensation.

History: (1), (3)En. Secs. 454, 455, p. 134, Bannack Stat.; re-en. Secs. 611, 612, p. 159, Cod. Stat. 1871; re-en. Secs. 531, 532, p. 179, L. 1877; re-en. Secs. 531, 532, 1st Div. Rev. Stat. 1879; re-en. Secs. 548, 549, 1st Div. Comp. Stat. 1887; re-en. Sec. 181, C. Civ. Proc. 1895; re-en. Sec. 6316, Rev. C. 1907; re-en. Sec. 8869, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 171; re-en. Sec. 8869, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1963; Sec. 93-902, R.C.M. 1947; (2)En. 82-511 by Sec. 2, Ch. 396, L. 1977; Sec. 82-511, R.C.M. 1947; R.C.M. 1947, 82-511, 93-902(part); amd. Sec. 4, Ch. 21, L. 1979.

3-1-602. Restrictions on justices of the peace practicing law or taking claims for collection. (1) Except as provided in subsection (2), a justice of the peace may not:

(a) practice law;

(b) draw contracts, conveyances, or other legal instruments or documents;

(c) take any claim or bill for collection or act as a collection agent in any sense; or

(d) perform any legal duties other than those prescribed by law as his official duties in the conduct of cases and proceedings in his court.

(2) A justice of the peace who is an attorney and who is admitted to practice law before the supreme court of the state of Montana may engage in the general practice of law and practice law in all courts in the state of Montana, except that such a justice, his law partner or associate, or a member, associate, or employee of a firm of which he is a member may not represent a party involved in a case which is filed or tried in his court or in any justice's court located in the same county as his court or which is appealed from such a court.

(3) A justice of the peace who violates any of the provisions of this section is guilty of malfeasance in office and shall be removed from his office of justice of the peace and thereafter be disqualified from holding such office.

History: En. Sec. 3, p. 92, L. 1901; re-en. Sec. 3114, Rev. C. 1907; re-en. Sec. 4863, R.C.M. 1921; re-en. Sec. 4863, R.C.M. 1935; amd. Sec. 1, Ch. 228, L. 1959; amd. Sec. 13, Ch. 344, L. 1977; R.C.M. 1947, 16-3605.

3-1-603. No judicial officer of court of record to have partner practicing law. No judicial officer of a court of record may have a partner acting as attorney or counsel in any court of this state.

History: En. Sec. 456, p. 135, Bannack Stat.; re-en. Sec. 613, p. 159, Cod. Stat. 1871; re-en. Sec. 533, p. 179, L. 1877; re-en. Sec. 533, 1st Div. Rev. Stat. 1879; re-en. Sec. 550, 1st Div. Comp. Stat. 1887; amd. Sec. 182, C. Civ. Proc. 1895; re-en. Sec. 6317, Rev. C. 1907; re-en. Sec. 8870, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 172; re-en. Sec. 8870, R.C.M. 1935; amd. Sec. 33, Ch. 344, L. 1977; R.C.M. 1947, 93-903.

3-1-604. Restrictions on municipal court judges. No municipal court judge may practice law or hold office in a political party during his term of office.

History: En. 11-1704.1 by Sec. 4, Ch. 429, L. 1977; R.C.M. 1947, 11-1704.1.

3-1-605. Restrictions on judicial officers after term has expired. A judicial officer as defined in 1-1-202, after the expiration of his term of office, may not act as attorney or counsel in any action or special proceeding which has been before him in his official character.

History: En. Sec. 183, C. Civ. Proc. 1895; re-en. Sec. 6318, Rev. C. 1907; re-en. Sec. 8871, R.C.M. 1921; re-en. Sec. 8871, R.C.M. 1935; R.C.M. 1947, 93-904; amd. Sec. 5, Ch. 21, L. 1979.

3-1-606. Justice of the peace or constable not to purchase judgment. (1) A justice of the peace may not purchase or be interested in the purchase of any judgment or part thereof on his docket or on any docket in his possession. A constable may not purchase or be interested in the purchase of any judgment or part thereof on the docket of a justice of the peace of the county of which he is a constable or on a docket in the possession of such a justice.

(2) Violation of subsection (1) is a misdemeanor.

History: En. Sec. 113, p. 205, Bannack Stat.; re-en. Sec. 126, p. 298, Cod. Stat. 1871; re-en. Sec. 126, 4th Div. Rev. Stat. 1879; re-en. Sec. 135, 4th Div. Comp. Stat. 1887; amd. Sec. 197, Pen. C. 1895; re-en. Sec. 8216, Rev. C. 1907; re-en. Sec. 10860, R.C.M. 1921; Cal. Pen. C. Sec. 97; re-en. Sec. 10860, R.C.M. 1935; Sec. 94-808, R.C.M. 1947; redes. 16-3607 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 5, Ch. 253, L. 1975; amd. Sec. 14, Ch. 344, L. 1977; R.C.M. 1947, 16-3607.

3-1-607. Supreme court justice or district court judge not to run for office — resignation required. (1) If a person occupying the office of chief justice or associate justice of the supreme court or judge of a district court of the state of Montana becomes a candidate for election to any elective office under the laws of the state of Montana, he shall immediately, and in any event at or before the time when he must file as a candidate for such office in any primary or special or general election, resign from his office of chief justice, associate justice, or district judge.

(2) The resignation becomes effective immediately upon its delivery to the proper officer or superior.

(3) The resignation requirement applies except when the person is a bona fide candidate for reelection to the identical office then occupied by him or for another nonpartisan judicial office the term of which does not commence earlier than the end of the term of the office then occupied by him.

History: **En. Sec. 1, Ch. 139, L. 1957; amd. Sec. 21, Ch. 344, L. 1977; R.C.M. 1947, 93-219(1).**

3-1-608. Forced vacancy. In the event of a failure to resign, the office of chief justice, associate justice, or district judge automatically becomes vacant and the former occupant has no further right, power, or authority therein for any purpose and no right to any emoluments thereof, notwithstanding the fact that a successor is not appointed or elected. The vacancy becomes operative to deprive the person of the emoluments of the office in order to carry out the policy of this section and 3-1-607.

History: **En. Sec. 1, Ch. 139, L. 1957; amd. Sec. 21, Ch. 344, L. 1977; R.C.M. 1947, 93-219(2).**

Part 7

Court Administrator

3-1-701. Office of court administrator — appointment and term of office. There is established the office of court administrator. The supreme court shall appoint a court administrator. The court administrator shall hold his position at the pleasure of the court.

History: **En. 82-510 by Sec. 1, Ch. 396, L. 1977; R.C.M. 1947, 82-510.**

3-1-702. Duties. The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

(1) prepare and present judicial budget requests to the legislature;

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide such information to the legislature upon request;

(3) recommend to the supreme court improvements in the judiciary; and

(4) perform such other duties as the supreme court may assign.

History: **En. 82-512 by Sec. 3, Ch. 396, L. 1977; R.C.M. 1947, 82-512.**

3-1-703. Cooperation of court officers. All court officers, including clerks of district courts, shall comply with requests made by the court administrator for information and statistical and financial data bearing on the business transacted by the courts.

History: **En. 82-513 by Sec. 4, Ch. 396, L. 1977; R.C.M. 1947, 82-513.**

Part 8

Disqualification and Substitution of Judges
Supreme Court Rule

3-1-801. Disqualification and substitution of judges — all courts. Any judge, or justice of the peace must not sit or act in any action or proceeding:

1. To which he is a party, or in which he is interested;
2. When he is related to either party by consanguinity or affinity within the sixth degree, computed according to the rules of law;
3. When he has been attorney or counsel for either party in the action or proceeding, or when he rendered or made the judgment, order or decision appealed from;
4. In a district court, when a motion for a substitution of a judge had been filed. In a civil case, each adverse party is entitled to two substitutions of a judge. In a criminal case, the state and each defendant is entitled to one substitution of a judge.

A motion for substitution of a judge shall be made by filing a written motion for substitution reading as follows: "The undersigned hereby moves for substitution of another judge for Judge .... in this cause." The clerk of court shall immediately give notice thereof to all parties and to the judge named in the motion. Upon filing this said notice the judge named in the motion shall have no further power to act in the cause other than to call in another judge, which he shall do forthwith, and to set the calendar.

When a case is filed in a multi-judge district, it shall be the duty of the clerk of court to stamp the name of the judge to which the case is assigned on the face of the summons, order to show cause, or information and all copies thereof.

Whenever a judge is assigned a case for 10 consecutive days and the attorneys of record on both sides have knowledge of the assignment for that period of time, and if during this time no motion for substitution of a judge is filed against him, all rights to move for substitution of a judge shall be deemed waived by all parties, unless the presiding judge disqualified himself thereafter in which case the right to move for substitution of a new judge is reinstated and the 10 day period starts running anew.

Whenever a new party enters a case, the 10 day period begins anew as to that party. During that time all other parties may file any motions for substitution of a judge allowed by this rule and not previously filed by them.

Whenever an acceptance of jurisdiction is filed by a new judge it shall be the duty of the clerk of court, forthwith, to mail a copy thereof by certified mail with return receipt requested, to all attorneys of record. Service thereof may also be made by delivery of a copy personally, or by getting a written receipt from the attorneys therefor. Proof of service, however made, shall be stapled to the acceptance of jurisdiction, so served, in said file.

5. In a justice's, police or municipal court, when either party makes and files an affidavit that he cannot have a fair and impartial trial before such justice, police or municipal court judge by reason of the interest, prejudice or bias of the justice, police or municipal court judge.

Each adverse party is entitled to file one such disqualification in a civil or criminal case.

When such a disqualifying affidavit is filed, against a justice of the peace, the justice so named shall have no further power to act in the case, other than to call in another justice from the same county, or from an adjoining county if there is no other justice available in the same county, to hear the case.

When such a disqualifying affidavit is filed against a police judge he shall have no further power to act in the case except to call in a justice of the peace or qualified resident to act in his stead as prescribed in section 3-11-203, MCA.

When such a disqualifying affidavit is filed against a judge of a municipal court, he shall have no further power to act in the case except to call in an attorney to act in his stead as prescribed in section 3-6-204, MCA.

6. When he has been disqualified for cause as hereinafter described:

Whenever a party to any proceeding in any court makes and files a timely and sufficient affidavit that a judge or justice of the peace, before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge or justice of the peace shall proceed no further therein, but another judge or justice of the peace shall be assigned to hear such disqualification proceeding by the chief justice of the Supreme Court, or by a district judge, if the affidavit is against a justice of the peace, police or municipal court judge. The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than 20 days before the original date of trial, or good cause shall be shown for failure to file it within such time. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

7. When a new trial is ordered in any case, whether by order of the district court or the Supreme Court, each adverse party shall be entitled to file one motion for substitution of a judge in the manner provided in paragraph 4, whether or not that party has previously filed motions for substitution of a judge. Such motions must be filed:

a. If the new trial has been ordered by the district court, within 10 days after the time for appealing the order has elapsed.

b. If the new trial has been ordered by the Supreme Court, within 10 days after notice of receipt of the remittitur has been received by the respective parties from the clerk of the district court.

8. The provisions of this rule shall not apply to any person in any cause involving a contempt of court.

History: En. Sup. Ct. Ord. dated Dec. 29, 1976; 34 St. Rep. 26.

Compiler's Comments

Superseded sections — effective date. Subsection 9 of the Supreme Court's rule provided in part: "This rule supersedes and is to be used to the exclusion of sections 93-901, 93-2906(4), 93-2907, 93-6602(2), 95-1709, and 95-2010, R.C.M. 1947.

This rule shall be effective on March 1, 1977, it to apply to all actions filed on or after that date."

Federal rule. Subsection 6 of the Supreme Court's rule is essentially the same as 28 U.S.C. 144.

Names of courts. Police court has been renamed city court. See section 3-11-101(2), MCA.

Effect of publication. Sec. 2, Ch. 1, L. 1979, which adopted the MCA, provided that publication of a Supreme Court Rule is done for the benefit of code users. The publication of this section should not be contrued as a legislative attempt to readopt or promulgate the rule.

Part 9 reserved

Part 10

Judicial Nomination Commission

3-1-1001. Creation, composition, and function of commission. (1) A judicial nomination commission for the state is created. Its function is to provide the governor with a list of candidates for appointment to fill any vacancy on the supreme court or any district court. The commission shall be composed of seven members as follows:

(a) four lay members who are neither judges nor attorneys, active or retired, who reside in different geographical areas of the state, and each of whom is representative of a different industry, business, or profession, whether actively so engaged or retired, who shall be appointed by the governor;

(b) two attorneys actively engaged in the practice of law, one from each congressional district, who shall be appointed by the supreme court;

(c) one district judge elected by the district judges under an elective procedure initiated and conducted by the supreme court and certified to such election by the chief justice of the supreme court. The election shall be considered an appointment for the purposes of this part.

(2) Appointments provided for in this section shall be made within 30 days of the completion of the preceding terms.

History: En. Sec. 1, Ch. 470, L. 1973; amd. Sec. 30, Ch. 344, L. 1977; R.C.M. 1947, 93-705; amd. Sec. 6, Ch. 21, L. 1979.

3-1-1002. Staggered terms of members. (1) All original members named to the commission shall serve until January 1, 1976. Their successors shall serve as follows:

(a) The members appointed by the governor shall serve 4-year terms.

(b) The attorneys appointed by the supreme court shall serve 2-year terms.

(c) The judge elected shall serve a 2-year term.

(2) Thereafter all members shall serve terms of 4 years.

History: En. Sec. 2, Ch. 470, L. 1973; R.C.M. 1947, 93-706(1), (2); amd. Sec. 7, Ch. 21, L. 1979.

3-1-1003. Vacancies. (1) In the event a vacancy on the commission occurs, the governor shall appoint a replacement for the remainder of the term. Such replacement shall be a member of the same group as the member he replaces.

(2) Appointments provided for in this section shall be made within 30 days of the occurrence of any vacancy.

History: En. Sec. 2, Ch. 470, L. 1973; R.C.M. 1947, 93-706(3), (4); amd. Sec. 8, Ch. 21, L. 1979.

3-1-1004. No compensation — travel expenses. The members of the commission are not entitled to compensation for their services, but they are entitled to travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, while actually engaged in the discharge of their official duties.

History: En. Sec. 12, Ch. 470, L. 1973; amd. Sec. 29, Ch. 453, L. 1977; R.C.M. 1947, 93-716.

3-1-1005. Commission members not eligible for judicial office. Members of the commission are not eligible for nomination to a judicial office during their term on the commission or for 1 year thereafter.

History: En. Sec. 11, Ch. 470, L. 1973; R.C.M. 1947, 93-715.

3-1-1006. Secretary — election and duties. (1) The commission shall elect one of its members to serve as the secretary and upon such election shall notify the governor of the name and mailing address of such person.

(2) The secretary shall keep a record of all proceedings by the commission and act as corresponding secretary with the governor's office.

History: En. Sec. 3, Ch. 470, L. 1973; R.C.M. 1947, 93-707.

3-1-1007. Commission to make rules — confidentiality of proceedings. (1) The commission shall make rules for the conduct of its affairs.

(2) The proceedings of the commission and the related documents shall be open to the public except when the demands of individual privacy clearly exceed the merits of public exposure.

History: En. Sec. 13, Ch. 470, L. 1973; R.C.M. 1947, 93-717; amd. Sec. 1, Ch. 423, L. 1979.

3-1-1008. Quorum. Four members of the commission shall constitute a quorum for the transaction of business. To submit a name to the governor, there must be a concurrence of at least four members.

History: En. Sec. 4, Ch. 470, L. 1973; R.C.M. 1947, 93-708.

3-1-1009. Investigation by commission — application for consideration. (1) The commission and each member are authorized to make investigations concerning the qualifications of eligible persons.

(2) Any lawyer in good standing who has the qualifications set forth by law for holding judicial office may be a candidate and may make application to the commission for consideration, or application may be made by any person on his behalf.

History: En. Sec. 5, Ch. 470, L. 1973; R.C.M. 1947, 93-709.

3-1-1010. List submitted to governor — report on proceedings. The commission shall meet forthwith after a vacancy occurs on the supreme court or district court and submit to the governor within 30 days from the date of the vacancy a list of not less than three or more than five nominees for appointment. The list must be accompanied by a written report to the governor indicating the vote on each nominee, the content of the application submitted by each nominee, and the commission's reasons for recommending each nominee for appointment.

History: En. Sec. 6, Ch. 470, L. 1973; R.C.M. 1947, 93-710; amd. Sec. 9, Ch. 21, L. 1979; amd. Sec. 2, Ch. 423, L. 1979.

3-1-1011. Governor to appoint from list. The governor must make an appointment from the list of nominees submitted by the commission.

History: En. Sec. 7, Ch. 470, L. 1973; R.C.M. 1947, 93-711; amd. Sec. 10, Ch. 21, L. 1979.

3-1-1012. When governor fails to appoint. If the governor fails to appoint within 30 days after receipt of the list, the chief justice or acting chief justice shall make the appointment.

History: En. Sec. 8, Ch. 470, L. 1973; R.C.M. 1947, 93-712; amd. Sec. 11, Ch. 21, L. 1979.

3-1-1013. Senate confirmation — appointment in the interim. Each appointment shall be confirmed by the senate, but an appointment made while the senate is not in session is effective until the end of the next session. If the appointment is not confirmed, the office shall be vacant and another selection of nominees and appointment shall be made.

History: En. Sec. 9, Ch. 470, L. 1973; R.C.M. 1947, 93-713; amd. Sec. 12, Ch. 21, L. 1979.

3-1-1014. Duration of appointment — election for remainder of term. An appointee confirmed by the senate serves until the next succeeding general election. The candidate elected at that election holds the office for the remainder of the unexpired term.

History: En. Sec. 10, Ch. 470, L. 1973; R.C.M. 1947, 93-714; amd. Sec. 13, Ch. 21, L. 1979.

Part 11

Judicial Standards Commission

3-1-1101. Creation and composition of commission. There is created a judicial standards commission consisting of five members as follows:

(1) two district court judges from different judicial districts, elected by the district judges under an elective procedure initiated by and conducted by the supreme court, and the two so elected certified as to such election by the chief justice of the supreme court, which for the purpose of the language of this part shall be considered as an appointment;

(2) one attorney who has practiced law in this state for at least 10 years, appointed by the supreme court;

(3) two citizens from different congressional districts who are not attorneys or judges of any court, active or retired, appointed by the governor.

History: En. Sec. 1, Ch. 95, L. 1973; R.C.M. 1947, 93-718.

3-1-1102. Staggered terms of members. (1) The first appointments made under this part are as follows:

(a) The supreme court shall designate by certificate of the chief justice one district court judge to serve for 4 years and one to serve for 2 years.

(b) The attorney shall serve for 4 years.

(c) The governor shall appoint one citizen to serve for 4 years and one to serve for 2 years.

(2) Thereafter, all terms shall be for 4 years.

History: En. Sec. 2, Ch. 95, L. 1973; R.C.M. 1947, 93-719.

3-1-1103. Terminated membership — vacancies. (1) Commission membership terminates if a member ceases to hold the position that qualified him for appointment.

(2) In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

History: En. Sec. 3, Ch. 95, L. 1973; R.C.M. 1947, 93-720.

3-1-1104. No compensation — travel expenses. A commission member is not entitled to compensation for his services but is entitled to travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred in the performance of his duties.

History: En. Sec. 4, Ch. 95, L. 1973; amd. Sec. 30, Ch. 453, L. 1977; R.C.M. 1947, 93-721.

3-1-1105. Confidential proceedings — rules for commission. (1) All papers filed with and proceedings before the commission or masters are confidential.

(2) The filing of papers with and the testimony given before the commission or masters is privileged communication.

(3) The commission shall make rules for the conduct of its affairs and provide for the confidentiality of its proceedings.

History: En. Sec. 6, Ch. 95, L. 1973; R.C.M. 1947, 93-723.

3-1-1106. Investigation of judicial officers — hearing — recommendations. (1) The commission or any citizen of the state may, upon good cause shown, initiate an investigation of any judicial officer in the state by filing a verified written complaint with the commission.

(2) The commission, after such investigation as it considers necessary and upon the finding of good cause, may:

(a) order a hearing to be held before it concerning the censure, suspension, removal, or retirement of a judicial officer; or

(b) request the supreme court to appoint one or more special masters who are judges of courts of record to hear and take evidence and to report to the commission.

(3) If after hearing or after considering the record and report of the masters the commission finds the charges true, it shall recommend to the supreme court the censure, suspension, removal, or retirement of the judicial officer.

History: En. Sec. 5, Ch. 95, L. 1973; R.C.M. 1947, 93-722.

3-1-1107. Action by supreme court. The supreme court shall review the record of the proceedings and shall make such determination as it finds just and proper and may:

(1) order censure, suspension, removal, or retirement of a judicial officer; or

(2) wholly reject the recommendation.

History: En. Sec. 7, Ch. 95, L. 1973; R.C.M. 1947, 93-724.

3-1-1108. Nonparticipation of interested judicial officer. A judicial officer who is a member of the commission or of the supreme court may not participate in any proceeding involving his own censure, suspension, removal, or retirement or that of his spouse, a relative within the sixth degree of consanguinity, or the spouse of such a relative.

History: En. Sec. 8, Ch. 95, L. 1973; amd. Sec. 31, Ch. 344, L. 1977; R.C.M. 1947, 93-725.

3-1-1109. Interim disqualification of judicial officer. A judicial officer is disqualified from acting as such, without loss of salary, while there is pending:

(1) an indictment or an information charging him with a crime punishable as a felony under Montana or federal law; or

(2) a formal proceeding before the commission for his removal or retirement.

History: En. Sec. 9, Ch. 95, L. 1973; amd. Sec. 32, Ch. 344, L. 1977; R.C.M. 1947, 93-726.

3-1-1110. Procedure when convicted of crime. (1) On recommendation of the commission, the supreme court may suspend a judicial officer from office without salary when he pleads guilty or no contest or is found guilty of a crime punishable as a felony under Montana or federal law or of any other crime involving moral turpitude.

(2) If his conviction is reversed, suspension terminates and he shall be paid his salary for the period of suspension.

(3) If he is suspended and his conviction becomes final, the supreme court shall remove him from office.

History: En. Sec. 10, Ch. 95, L. 1973; R.C.M. 1947, 93-727.

3-1-1111. Orders for retirement or removal. (1) Upon an order for retirement, the judicial officer shall be retired with the same rights and privileges as if he retired pursuant to statute.

(2) Upon an order for removal, the judicial officer shall be removed from office and his salary shall cease from the date of the order. He shall be ineligible for any other judicial office and pending further order of the court is suspended from practicing law.

History: En. Sec. 11, Ch. 95, L. 1973; R.C.M. 1947, 93-728.

CHAPTER 2

SUPREME COURT

Part 1 — Supreme Court Justices

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Part 1

Supreme Court Justices

3-2-101. Number, election, and term of office. The supreme court consists of a chief justice and six associate justices who are elected by the qualified electors of the state at large at the general state elections next preceding the expiration of the terms of office of their predecessors, respectively, and hold their offices for the term of 8 years from and after the first Monday of January next succeeding their election.

History: En. Sec. 12, C. Civ. Proc. 1895; re-en. Sec. 6244, Rev. C. 1907; amd. Sec. 1, Ch. 31, Ex. L. 1919; re-en. Sec. 8790, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 40; re-en. Sec. 8790, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1973; R.C.M. 1947, 93-201; amd. Sec. 1, Ch. 683, L. 1979.

Compiler's Comments

New justices — how selected. Sec. 2, Ch. 683, L. 1979, provided: "The associate justices created by [this act] shall be filled initially at the 1980 general election, and the individuals elected shall take office on the first Monday of January, 1981."

Effective period. Sec. 5, Ch. 683, L. 1979, provided: "This act is effective until the first Monday of January, 1989, at which time the number of associate justices authorized by this act shall revert to four. The code commissioner is directed to make appropriate changes in the Montana Code Annotated to reflect the intent of this section."

Severability. Sec. 6, Ch. 683, L. 1979, is a severability section.

3-2-102. Qualifications and residence. (1) No person is eligible for the office of justice of the supreme court unless he is a citizen of the United States, has resided in the state 2 years immediately before taking office, and has been admitted to practice law in Montana for at least 5 years prior to the date of appointment or election.

(2) Justices of the supreme court must reside within the state during their terms of office.

History: En. Sec. 161, C. Civ. Proc. 1895; re-en. Sec. 6309, Rev. C. 1907; re-en. Sec. 8863, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 157; re-en. Sec. 8863, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1973; amd. Sec. 27, Ch. 344, L. 1977; R.C.M. 1947, 93-702(part).

3-2-103. Computation of term of office. The years during which a justice of the supreme court is to hold office are to be computed respectively from and including the first Monday of January of any one year to and excluding the first Monday of January of the next succeeding year.

History: En. Sec. 13, C. Civ. Proc. 1895; re-en. Sec. 6245, Rev. C. 1907; re-en. Sec. 8797, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 41; re-en. Sec. 8797, R.C.M. 1935; R.C.M. 1947, 93-208.

3-2-104. Salaries — affidavit required for payment — expenses. (1) The salaries of justices of the supreme court are provided for in 2-16-405.

(2) The state auditor shall not draw a warrant in payment of the services of any justice of the supreme court until such justice shall have filed with the auditor an affidavit that no cause, motion, or other proceeding in his court remains pending and undecided for a period of 90 days after the same shall have been submitted for decision unless casualty or sickness shall have intervened.

(3) Actual and necessary travel expenses of the justices of the supreme court shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of their official duties.

History: (1)En. by Code Commissioner, 1979; (2)En. Sec. 1, Ch. 85, L. 1917; re-en. Sec. 8815, R.C.M. 1921; re-en. Sec. 8815, R.C.M. 1935; Sec. 93-304, R.C.M. 1947; R.C.M. 1947, 93-304(part); amd. Sec. 1, Ch. 528, L. 1979.

Compiler's Comments

Transition. Sec. 16, Ch. 528, L. 1979, provided: "A judicial officer, as defined in 1-1-202, who is occupying his judicial office on the effective date of this act shall continue to be paid expenses on the same basis as he is receiving them on the effective date of this act until the expiration of his term of office. All judicial officers who take office or begin a new term of office after the effective date of this act shall receive expenses as provided in this act."

Severability. Sec. 17, Ch. 528, L. 1979, was a severability section.

Part 2

Supreme Court Jurisdiction

3-2-201. Types of jurisdiction. The jurisdiction of the supreme court is of two kinds:

(1) original; and

(2) appellate.

History: En. Sec. 18, C. Civ. Proc. 1895; re-en. Sec. 6250, Rev. C. 1907; re-en. Sec. 8802, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 50; re-en. Sec. 8802, R.C.M. 1935; R.C.M. 1947, 93-213.

3-2-202. Original jurisdiction. (1) In the exercise of its original jurisdiction, the supreme court has power to issue writs of mandamus, certiorari, prohibition, injunction, and habeas corpus.

(2) It also has power to issue all other writs necessary and proper to the complete exercise of its appellate jurisdiction.

History: En. Sec. 19, C. Civ. Proc. 1895; re-en. Sec. 6251, Rev. C. 1907; re-en. Sec. 8803, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 51; re-en. Sec. 8803, R.C.M. 1935; R.C.M. 1947, 93-214.

3-2-203. Appellate jurisdiction. The appellate jurisdiction of the supreme court extends to all cases at law and in equity.

History: En. Sec. 20, C. Civ. Proc. 1895; re-en. Sec. 6252, Rev. C. 1907; re-en. Sec. 8804, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 52; re-en. Sec. 8804, R.C.M. 1935; R.C.M. 1947, 93-215.

3-2-204. Powers and duties of court on appeals. (1) The supreme court may affirm, reverse, or modify any judgment or order appealed from and may direct the proper judgment or order to be entered or direct a new trial or further proceedings to be had.

(2) The decision of the court must be given in writing, and a syllabus thereof must be prepared by the court and filed with the opinion.

(3) In giving its decision, if a new trial be granted, the court must pass upon and determine all the questions of law involved in the case presented upon such appeal and necessary to the final determination of the case.

(4) Its judgment in appealed cases must be remitted to the court from which the appeal was taken.

(5) In equity cases and in matters and proceedings of an equitable nature, the supreme court shall review all questions of fact arising upon the evidence presented in the record, whether the same be presented by specifications of particulars in which the evidence is alleged to be insufficient or not, and determine the same, as well as questions of law, unless for good cause a new trial or the taking of further evidence in the court below be ordered. Nothing herein shall be construed to abridge in any manner the powers of the supreme court in other cases.

History: En. Ch. 1, Ex. L. 1903; re-en. Sec. 6253, Rev. C. 1907; re-en. Sec. 8805, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 53; re-en. Sec. 8805, R.C.M. 1935; R.C.M. 1947, 93-216.

3-2-205. Injunctions. (1) Upon such terms and under such rules as the supreme court may establish, the supreme court may continue in force an injunction order made by a district court or judge or grant an injunction order and writ pending an appeal to the supreme court from an order of a district court or judge refusing or dissolving an injunction.

(2) No action to obtain an injunction may be commenced in the supreme court except in cases where the state is a party, the public is interested, or the rights of the public are involved. The proper district court has jurisdiction of all injunctions and the commencement of all actions therefor, except as provided in this section.

(3) The supreme court may provide rules for the commencement and trial of actions for injunctions in that court.

History: En. Sec. 23, C. Civ. Proc. 1895; re-en. Sec. 6255, Rev. C. 1907; re-en. Sec. 8807, R.C.M. 1921; re-en. Sec. 8807, R.C.M. 1935; R.C.M. 1947, 93-218; amd. Sec. 14, Ch. 21, L. 1979.

3-2-206 through 3-2-210 reserved.

3-2-211. Concurrence of majority — for what necessary. The concurrence of a majority of the justices of the supreme court is necessary for the issuance of any writ or the transaction of any business except such as can be done at chambers.

History: En. Sec. 22, C. Civ. Proc. 1895; re-en. Sec. 6254, Rev. C. 1907; amd. Sec. 1, Ch. 34, L. 1921; re-en. Sec. 8806, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 54; re-en. Sec. 8806, R.C.M. 1935; R.C.M. 1947, 93-217(part).

3-2-212. Powers of justices individually — certiorari and habeas corpus. (1) Each of the justices of the supreme court shall have power to issue writs of habeas corpus to any part of the state upon petition by or on behalf of any person held in actual custody and may make such writs returnable before himself, the supreme court, or justice thereof or before any district court of the state or any judge thereof. Such writs may be heard and determined by the justice, court, or judge before whom they are made returnable.

(2) Each of the justices of the supreme court may also issue and hear and determine writs of certiorari in proceedings for contempt in the district court.

History: Ap. p. Sec. 170, C. Civ. Proc. 1895; re-en. Sec. 6313, Rev. C. 1907; re-en. Sec. 8866, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 165; re-en. Sec. 8866, R.C.M. 1935; Sec. 93-801, R.C.M. 1947; Ap. p. Sec. 22, C. Civ. Proc. 1895; re-en. Sec. 6254, Rev. C. 1907; amd. Sec. 1, Ch. 34, L. 1921; re-en. Sec. 8806, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 54; re-en. Sec. 8806, R.C.M. 1935; Sec. 93-217, R.C.M. 1947; R.C.M. 1947, 93-217(part), 93-801.

Part 3

Sessions of the Supreme Court

3-2-301. Who shall preside. The chief justice presides at all sessions of the supreme court, and in case of his absence, the associate justice having the shortest term to serve presides in his stead.

History: En. Sec. 15, C. Civ. Proc. 1895; re-en. Sec. 6247, Rev. C. 1907; re-en. Sec. 8799, R.C.M. 1921; re-en. Sec. 8799, R.C.M. 1935; R.C.M. 1947, 93-210(part).

3-2-302. Quorum. A majority of the justices is necessary to form a quorum of the court. Any decision must be concurred in by a majority of the justices of the court, but one or more of the justices may adjourn the court from day to day or to a day certain.

History: En. Sec. 15, C. Civ. Proc. 1895; re-en. Sec. 6247, Rev. C. 1907; re-en. Sec. 8799, R.C.M. 1921; re-en. Sec. 8799, R.C.M. 1935; R.C.M. 1947, 93-210(part); amd. Sec. 4, Ch. 683, L. 1979.

3-2-303. Terms of supreme court. (1) Four terms of the supreme court must be held each year at the seat of government, commencing on the first Tuesdays of March, June, October, and December.

(2) The chief justice or any two justices have power to call a special term at any time.

History: En. Sec. 16, C. Civ. Proc. 1895; re-en. Sec. 6248, Rev. C. 1907; re-en. Sec. 8800, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 47; re-en. Sec. 8800, R.C.M. 1935; R.C.M. 1947, 93-211(part).

3-2-304. Physical facilities. (1) If proper rooms in which to hold the court and for the accommodation of the officers thereof are not provided by the state, together with attendants, furniture, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the court or any two justices thereof may direct the clerk of the supreme court to provide such rooms, attendants, furniture, lights, fuel, and stationery.

(2) The expenses thereof, certified by any two justices to be correct, must be paid out of the state treasury out of any funds in the state treasury not otherwise appropriated.

History: En. Sec. 16, C. Civ. Proc. 1895; re-en. Sec. 6248, Rev. C. 1907; re-en. Sec. 8800, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 47; re-en. Sec. 8800, R.C.M. 1935; R.C.M. 1947, 93-211(part).

Part 4

Clerk of the Supreme Court

3-2-401. Election and term of office. There must be a clerk of the supreme court who must be elected by the electors at large of the state and hold his office for the term of 6 years from the first Monday of January next succeeding his election.

History: En. Sec. 870, Pol. C. 1895; re-en. Sec. 299, Rev. C. 1907; re-en. Sec. 370, R.C.M. 1921; Cal. Pol. C. Secs. 749-758; re-en. Sec. 370, R.C.M. 1935; amd. Sec. 45, Ch. 100, L. 1973; R.C.M. 1947, 82-501.

3-2-402. Duties. It is the duty of the clerk to:

(1) keep the seal of the supreme court, its records and files, and the roll of attorneys and counselors at law;

(2) adjourn the court from day to day at the beginning of any term in the absence of any justice and until the arrival of a majority of the justices;

(3) file all papers or transcripts required by law to be filed;

(4) issue writs and certificates and approve bonds or undertakings when so required;

(5) make out all transcripts to the supreme court of the United States;

(6) make copies of papers or records when demanded by law or the rules of the court; and

(7) perform such other duties as may be required of him by law and the rules and practice of the supreme court.

History: Ap. p. Sec. 871, Pol. C. 1895; re-en. Sec. 300, Rev. C. 1907; re-en. Sec. 371, R.C.M. 1921; re-en. Sec. 371, R.C.M. 1935; Sec. 82-502, R.C.M. 1947; Ap. p. Sec. 3, p. 208, L. 1891; amd. Sec. 873, Pol. C. 1895; re-en. Sec. 302, Rev. C. 1907; re-en. Sec. 373, R.C.M. 1921; re-en. Sec. 373, R.C.M. 1935; Sec. 82-504, R.C.M. 1947; R.C.M. 1947, 82-502, 82-504; amd. Sec. 15, Ch. 21, L. 1979.

3-2-403. Fees. The clerk must collect in advance the following fees:

(1) for filing the transcript on appeal in any civil case appealed to the supreme court, $20 payable by the appellant and $10 payable by the respondent at the time of his appearance, as payment in full for all services rendered in the case up to the remittitur to the court below;

(2) for filing a petition for any writ, $20, as payment in full for all services rendered in the cause;

(3) for a certificate of admission as an attorney, $5;

(4) for making transcripts or copies of papers or records, 15 cents per folio;

(5) for comparing any document requiring a certificate, 5 cents per folio;

(6) for each certificate under seal, $1.

History: En. Sec. 872, Pol. C. 1895; re-en. Sec. 301, Rev. C. 1907; re-en. Sec. 372, R.C.M. 1921; re-en. Sec. 372, R.C.M. 1935; amd. Sec. 1, Ch. 156, L. 1939; amd. Sec. 1, Ch. 112, L. 1943; amd. Sec. 87, Ch. 147, L. 1963; amd. Sec. 3, Ch. 218, L. 1967; amd. Sec. 18, Ch. 344, L. 1977; R.C.M. 1947, 82-503(1).

3-2-404. Disposition of fees. Three-fourths of all fees collected by the clerk must be paid into the state treasury and shall be credited to the general fund. One-fourth of all fees collected by him shall be paid to the public employees' retirement division of the department of administration to be credited to the Montana judges' retirement system account.

History: En. Sec. 872, Pol. C. 1895; re-en. Sec. 301, Rev. C. 1907; re-en. Sec. 372, R.C.M. 1921; re-en. Sec. 372, R.C.M. 1935; amd. Sec. 1, Ch. 156, L. 1939; amd. Sec. 1, Ch. 112, L. 1943; amd.

Sec. 87, Ch. 147, L. 1963; amd. Sec. 3, Ch. 218, L. 1967; amd. Sec. 18, Ch. 344, L. 1977; R.C.M. 1947, 82-503(2).

3-2-405. Settlements and accounts to state auditor. (1) The clerk is responsible and must account for and, in his settlement with the state auditor, must be charged with the full amount of all fees collected or chargeable and accruing in causes brought into the court for services rendered therein up to the time of each settlement. The settlement must take place quarterly, and immediately thereafter the clerk must pay the amount found due into the treasury or to the public employees' retirement division, as provided in 3-2-404.

(2) He must also at the end of each quarter render to the state auditor, in such form as that officer prescribes, an account in detail and under oath of all fees chargeable and accruing in causes brought into court and not included in his previous accounts.

(3) His salary may not be allowed or paid until all fees so accruing for which he is chargeable have been accounted for and paid over.

History: En. Sec. 874, Pol. C. 1895; re-en. Sec. 303, Rev. C. 1907; re-en. Sec. 374, R.C.M. 1921; amd. Sec. 374, R.C.M. 1935; amd. Sec. 19, Ch. 344, L. 1977; R.C.M. 1947, 82-505.

3-2-406. Deputy clerk. The clerk of the supreme court shall appoint a deputy who, in the absence of the principal or in the case of vacancy in his office, shall perform all the duties of office until such disability be removed or vacancy be filled. Such deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of his duties.

History: En. Sec. 1, Ch. 86, L. 1903; re-en. Sec. 143, Rev. C. 1907; re-en. Sec. 122, R.C.M. 1921; re-en. Sec. 122, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1947; amd. Sec. 1, Ch. 8, L. 1949; amd. Sec. 48, Ch. 177, L. 1965; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 82-601(part).

Part 5

Marshal of the Supreme Court

3-2-501. Appointment of marshal and other employees. The supreme court must appoint a marshal of the supreme court and may appoint such other attendants, reporters, and clerks as are necessary, who hold office at the pleasure of the court.

History: En. Sec. 862, Pol. C. 1895; re-en. Sec. 295, Rev. C. 1907; re-en. Sec. 366, R.C.M. 1921; re-en. Sec. 366, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1939; amd. Sec. 1, Ch. 205, L. 1955; R.C.M. 1947, 82-1801.

3-2-502. Duties of marshal. (1) It shall be the duty of the marshal to attend upon the supreme court and the justices thereof at each term of court. He shall be the executive officer of the court and act as crier thereof.

(2) He must serve within the state all returns and processes issuing from the supreme court and shall have all the powers and exercise all the duties pertaining to sheriffs as to the district courts so far as the same are applicable.

(3) He shall act as a law clerk for the supreme court justices.

History: En. Sec. 863, Pol. C. 1895; re-en. Sec. 296, Rev. C. 1907; re-en. Sec. 367, R.C.M. 1921; re-en. Sec. 367, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1939; R.C.M. 1947, 82-1802.

3-2-503. Accounts of marshal. All accounts of the marshal must be filed in the supreme court in a bill of items under oath certified by the chief justice and, when properly chargeable against the state and approved by the department of administration, must be paid out of the state treasury upon the warrant of the state auditor.

History: En. Sec. 865, Pol. C. 1895; re-en. Sec. 298, Rev. C. 1907; re-en. Sec. 369, R.C.M. 1921; re-en. Sec. 369, R.C.M. 1935; amd. Sec. 99, Ch. 326, L. 1974; R.C.M. 1947, 82-1804.

Part 6

Form and Reporting of Decisions

3-2-601. Decisions to be in writing. In the determination of causes, all decisions of the supreme court must be given in writing, the grounds of the decision must be stated, and each justice agreeing or concurring with the decision must so indicate by signing the decision. Any justice disagreeing with a decision must so indicate by written dissent.

History: En. Sec. 440, p. 132, Bannack Stat.; re-en. Sec. 597, p. 157, Cod. Stat. 1871; re-en. Sec. 17, C. Civ. Proc. 1895; re-en. Sec. 6249, Rev. C. 1907; re-en. Sec. 8801, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 49; re-en. Sec. 8801, R.C.M. 1935; amd. Sec. 1, Ch. 271, L. 1975; R.C.M. 1947, 93-212.

3-2-602. Justices to report decisions. The justices of the supreme court shall report the decisions of the supreme court.

History: En. Sec. 2, p. 72, L. 1899; re-en. Sec. 314, Rev. C. 1907; re-en. Sec. 378, R.C.M. 1921; Cal. Pol. C. Secs. 767-782; re-en. Sec. 378, R.C.M. 1935; amd. Sec. 2, Ch. 182, L. 1949; R.C.M. 1947, 82-2001.

3-2-603. Duties of reporters. (1) The reporters of the decisions of the supreme court shall make careful and accurate reports of the cases decided by the supreme court. The reports of the cases shall be made under the supervision of and pursuant to rules adopted by the justices of the supreme court.

(2) Reports of all cases shall be furnished to the West Publishing Company for inclusion in its publication, the Pacific Reporter, and to any other private printing or duplicating concern requesting the reports for publication.

(3) The department of administration, on request of the supreme court, shall contract with a publishing house to publish volumes of reports. The style, size, and format of the reports shall be determined by the justices. The department of administration shall prepare and issue a call for bids and, in accordance with the terms and specifications of the call, contract with the lowest and best bidder.

History: En. Sec. 891, Pol. C. 1895; re-en. Sec. 307, Rev. C. 1907; re-en. Sec. 379, R.C.M. 1921; re-en. Sec. 379, R.C.M. 1935; amd. Sec. 1, Ch. 174, L. 1947; amd. Sec. 1, Ch. 14, L. 1961; amd. Sec. 1, Ch. 305, L. 1967; amd. Sec. 79, Ch. 326, L. 1974; R.C.M. 1947, 82-2002.

3-2-604. Distribution of reports. (1) On the publication of each volume of the reports, the secretary of state shall purchase 300 copies from the publisher for the use of the state. He shall distribute them in the following manner:

(a) to the law library of each state and territory of the United States, one copy;

(b) to the library of congress, five copies;

(c) to each of the judges of the United States district courts of the states of Idaho, Nevada, California, Washington, Montana, Wyoming, and Oregon, one copy;

(d) to each justice of the supreme court, district judge, county attorney, and clerk of a district court in this state, one copy;

(e) to each state office, as many copies as the secretary of state determines are needed;

(f) to the law library of the state of Montana, three copies.

(2) He shall also distribute the reports to literary and scientific institutions, publishers, authors, and legislative reference libraries of other states with which the state law librarian has established a system of exchange.

(3) He shall also distribute to the university of Montana up to 50 copies to be used by the law librarian of the university for the purpose of exchanges with universities and institutions of higher education in other states.

(4) All reports distributed to state, district, and other officers in the state are for the use of their office and shall be, by the person receiving them, turned over to his successor in office. The secretary of state shall take proper receipts for the reports.

History: En. Sec. 896, Pol. C. 1895; re-en. Sec. 312, Rev. C. 1907; amd. Sec. 1, Ch. 203, L. 1921; re-en. Sec. 384, R.C.M. 1921; re-en. Sec. 384, R.C.M. 1935; amd. Sec. 3, Ch. 46, L. 1937; amd. Sec. 20, Ch. 344, L. 1977; R.C.M. 1947, 82-2007.

Part 7

Adoption of Rules of Civil Procedure

3-2-701. Power of court over rules. The supreme court of this state shall have the power to regulate the pleading, practice, procedure, and the forms thereof in civil actions in all courts of this state by rules promulgated by it from time to time for the purpose of simplifying judicial proceedings in the courts of Montana and for promoting the speedy determination of litigation upon its merits. Such rules shall not abridge, enlarge, or modify the substantive rights of any litigant and shall not be inconsistent with the constitution of the state of Montana.

History: En. Sec. 1, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-1.

3-2-702. Advisory committee. Before any rules are adopted, the supreme court shall appoint an advisory committee consisting of eight members of the bar of the state and at least three judges of the district court to assist the court in considering and preparing such rules as it may adopt.

History: En. Sec. 2, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-2.

3-2-703. Distribution of proposed rules — suggestions of bench and bar. (1) Before any rule is adopted, the supreme court shall distribute copies of the proposed rule to the bench and bar of the state for their consideration and suggestions and shall give due consideration to such suggestions as they may submit to the court.

(2) The state bar of Montana or the association of Montana judges may file with the supreme court a petition specifying its suggestions concerning any existing or proposed rule and requesting a hearing thereon within 6 months after the filing of the petition.

History: En. Sec. 3, Ch. 16, L. 1963; amd. Sec. 54, Ch. 344, L. 1977; R.C.M. 1947, 93-2801-3.

3-2-704. Local rules. Any district court and the supreme court may adopt rules of court governing its practice so long as such rules are not in conflict with the rules promulgated by the supreme court of the state of Montana in accordance with this part.

History: En. Sec. 4, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-4.

3-2-705. No effect on powers of boards or commissions. This part shall not affect the power of any constitutional or statutory commission or board to make rules governing its practice.

History: En. Sec. 5, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-5.

3-2-706. Effect on existing laws and rules. All present laws and rules relating to pleading, practice, and procedure shall be effective as rules of court until modified or superseded by subsequent court rule. Upon the adoption of any rule pursuant to this part, such laws and rules insofar as they are in conflict therewith shall thereafter be of no further force and effect.

History: En. Sec. 6, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-6.

3-2-707. When rules effective. All rules promulgated under this part shall be effective at a time fixed by the supreme court.

History: En. Sec. 7, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-7.

3-2-708. No abridgment of legislative power. This part shall not abridge the right of the legislature to enact, modify, or repeal any statute or modify or repeal any rule of the supreme court adopted pursuant thereto.

History: En. Sec. 8, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-8.

CHAPTERS 3 AND 4

RESERVED

CHAPTER 5

DISTRICT COURTS

Part 1 — Definition of Districts and Assignment of Judges

Section
3-5-101. Judicial districts defined.
3-5-102. Number of judges.
Sections 3-5-103 through 3-5-110 reserved.
3-5-111. District courts presided over by judges of other districts.
3-5-112. Order from governor.
3-5-113. Judges pro tempore.

Part 2 — District Court Judges

3-5-201. Election and oath of office.
3-5-202. Qualifications and residence.
3-5-203. Term of office.
3-5-204. Computation of term of office.

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3-5-211. Salaries and expenses of district judges.
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Part 1

Definition of Districts and Assignment of Judges

3-5-101. Judicial districts defined. In this state there are 19 judicial districts, distributed as follows:

(1) 1st district: Lewis and Clark and Broadwater Counties;
(2) 2nd district: Silver Bow County;
(3) 3rd district: Deer Lodge, Granite, and Powell Counties;
(4) 4th district: Missoula, Mineral, Lake, Ravalli, and Sanders Counties;
(5) 5th district: Beaverhead, Jefferson, and Madison Counties;
(6) 6th district: Park and Sweet Grass Counties;
(7) 7th district: Dawson, McCone, Richland, and Wibaux Counties;
(8) 8th district: Cascade and Chouteau Counties;
(9) 9th district: Teton, Pondera, Toole, and Glacier Counties;
(10) 10th district: Fergus, Judith Basin, and Petroleum Counties;
(11) 11th district: Flathead County;
(12) 12th district: Liberty, Hill, and Blaine Counties;
(13) 13th district: Yellowstone, Big Horn, Carbon, Stillwater, and Treasure Counties;
(14) 14th district: Meagher, Wheatland, Golden Valley, and Musselshell Counties;
(15) 15th district: Roosevelt, Daniels, and Sheridan Counties;
(16) 16th district: Custer, Carter, Fallon, Prairie, Powder River, Garfield, and Rosebud Counties;
(17) 17th district: Phillips and Valley Counties;
(18) 18th district: Gallatin County;
(19) 19th district: Lincoln County.

History: En. Sec. 6256, Rev. C. 1907; re-en. Sec. 8812, R.C.M. 1921; amd. Sec. 1, Ch. 91, L. 1929; re-en. Sec. 8812, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1973; amd. Sec. 1, Ch. 517, L. 1977; R.C.M. 1947, 93-301.

3-5-102. Number of judges. In each judicial district there must be the following number of judges of the district court:
(1) in the 1st, 2nd, 11th, 16th, and 18th districts, two judges each;
(2) in the 8th district, three judges;
(3) in the 4th and 13th districts, four judges each;
(4) in all other districts, one judge each.

History: En. Sec. 1, p. 156, L. 1901; re-en. Sec. 6264, Rev. C. 1907; re-en. Sec. 8813, R.C.M. 1921; amd. Sec. 2, Ch. 91, L. 1929; re-en. Sec. 8813, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1955; amd. Sec. 1, Ch. 91, L. 1957; amd. Sec. 1, Ch. 161, L. 1959; amd. Sec. 1, Ch. 229, L. 1963; amd. Sec. 1, Ch. 14, L. 1973; amd. Sec. 22, Ch. 344, L. 1977; amd. Sec. 2, Ch. 517, L. 1977; R.C.M. 1947, 93-302(part); amd. Sec. 1, Ch. 542, L. 1979.

Compiler's Comments

New judge — how selected. Sec. 2, Ch. 542, L. 1979, provided: "The judgeship created by this act shall be filled initially at the 1980 general election, and the individual elected shall take office on the first Monday of January, 1981." Chapter 542 added a fourth judge to the 4th Judicial District.

3-5-103 through 3-5-110 reserved.

3-5-111. District courts presided over by judges of other districts. A judge of the district court of any judicial district may hold the district court in any county of another district than his own at the request of the judge thereof or as otherwise provided by law. Upon the request of the governor, it is his duty to do so. In either case the judge holding the court has the same power either in court or chambers as a judge thereof.

History: En. Sec. 36, C. Civ. Proc. 1895; re-en. Sec. 6270, Rev. C. 1907; re-en. Sec. 8821, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 71; re-en. Sec. 8821, R.C.M. 1935; R.C.M. 1947, 93-310; amd. Sec. 28, Ch. 697, L. 1979.

3-5-112. Order from governor. If for any cause a district court is not or cannot be held in any county by the judge or judges thereof or by a district judge requested by such judge or judges to hold such court or if the business of the court in any county is not or cannot be dispatched with reasonable promptness, the governor may, upon application of any interested person, by an order in writing, require some district judge to hold court in said county for such time as may be specified in the order.

History: En. Sec. 164, C. Civ. Proc. 1895; re-en. Sec. 6312, Rev. C. 1907; amd. Sec. 1, Ch. 33, L. 1915; re-en. Sec. 8823, R.C.M. 1921; re-en. Sec. 8823, R.C.M. 1935; R.C.M. 1947, 93-312.

3-5-113. Judges pro tempore. (1) A civil action in the district court may be tried by a judge pro tempore, who must be a member of the bar of the state, agreed upon in writing by the parties litigant or their attorneys of record, approved by the court, and sworn to try the cause before entering upon his duties.

(2) Any order, judgment, or decree made or rendered by such judge pro tempore shall have the same force and effect as if made or rendered by the court with the regular judge presiding.

History: En. Sec. 37, C. Civ. Proc. 1895; re-en. Sec. 6271, Rev. C. 1907; re-en. Sec. 8822, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 72; re-en. Sec. 8822, R.C.M. 1935; R.C.M. 1947, 93-311.

Part 2

District Court Judges

3-5-201. Election and oath of office. (1) The judges of the district court must be elected by the qualified voters of the district.

(2) Each judge of a district court must, as soon as he has taken and subscribed his official oath, file the same in the office of the secretary of state.

History: (1)En. Sec. 1, p. 156, L. 1901; re-en. Sec. 6264, Rev. C. 1907; re-en. Sec. 8813, R.C.M. 1921; amd. Sec. 2, Ch. 91, L. 1929; re-en. Sec. 8813, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1955; amd. Sec. 1, Ch. 91, L. 1957; amd. Sec. 1, Ch. 161, L. 1959; amd. Sec. 1, Ch. 229, L. 1963; amd. Sec. 1, Ch. 14, L. 1973; amd. Sec. 22, Ch. 344, L. 1977; amd. Sec. 2, Ch. 517, L. 1977; Sec. 93-302, R.C.M. 1947; (2)En. Sec. 1014, Pol. C. 1895; re-en. Sec. 366, Rev. C. 1907; re-en. Sec. 434, R.C.M. 1921; Cal. Pol. C. Sec. 909; re-en. Sec. 434, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1949; Sec. 59-417, R.C.M. 1947; R.C.M. 1947, 59-417(3), 93-302(part).

3-5-202. Qualifications and residence. (1) No person is eligible for the office of judge of a district court unless he is a citizen of the United States, has resided in the state 2 years immediately before taking office, and has been admitted to practice law in Montana for at least 5 years prior to the date of appointment or election.

(2) A judge of a district court need not be a resident of the district for which he is elected or appointed at the time of his election or appointment, but after his election or appointment, he must reside in a county seat in the district for which he is elected or appointed during his term of office.

History: En. Sec. 161, C. Civ. Proc. 1895; re-en. Sec. 6309, Rev. C. 1907; re-en. Sec. 8863, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 157; re-en. Sec. 8863, R.c.M. 1935; amd. Sec. 1, Ch. 15, L. 1973; amd. Sec. 29, Ch. 344, L. 1977; R.C.M. 1947, 93-702(part).

3-5-203. Term of office. The term of office of judges of the district court is 6 years and begins on the first Monday of January next succeeding their election.

History: Ap. p. Sec. 33, C. Civ. Proc. 1895; re-en. Sec. 6267, Rev. C. 1907; re-en. Sec. 8818, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 68; re-en. Sec. 8818, R.C.M. 1935; Sec. 93-307, R.C.M. 1947;

Ap. p. Sec. 1, p. 156, L. 1901; re-en. Sec. 6264, Rev. C. 1907; re-en. Sec. 8813, R.C.M. 1921; amd. Sec. 2, Ch. 91, L. 1929; re-en. Sec. 8813, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1955; amd. Sec. 1, Ch. 91, L. 1957; amd. Sec. 1, Ch. 161, L. 1959; amd. Sec. 1, Ch. 229, L. 1963; amd. Sec. 1, Ch. 14, L. 1973; amd. Sec. 22, Ch. 344, L. 1977; amd. Sec. 2, Ch. 517, L. 1977; Sec. 93-302, R.C.M. 1947; R.C.M. 1947, 93-302(part), 93-307.

3-5-204. Computation of term of office. The years during which a judge of a district court is to hold office are to be computed respectively from and including the first Monday of January of any one year to and excluding the first Monday of January of the next succeeding year.

History: En. Sec. 34, C. Civ. Proc. 1895; re-en. Sec. 6268, Rev. C. 1907; re-en. Sec. 8819, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 69; re-en. Sec. 8819, R.C.M. 1935; R.C.M. 1947, 93-308.

3-5-205 through 3-5-210 reserved.

3-5-211. Salaries and expenses of district judges. (1) The annual salary of each district judge is as follows:

(a) for the fiscal year beginning July 1, 1979, and ending June 30, 1980, $37,000;

(b) after June 30, 1980, $39,000.

(2) Actual and necessary expenses for each district judge shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties.

History: En. Sec. 1, Ch. 176, L. 1919; re-en. Sec. 8814, R.C.M. 1921; re-en. Sec. 8814, R.C.M. 1935; amd. Sec. 1, Ch. 114, L. 1947; amd. Sec. 1, Ch. 84, L. 1951; amd. Sec. 1, Ch. 247, L. 1955; amd. Sec. 1, Ch. 198, L. 1959; amd. Sec. 1, Ch. 187, L. 1961; amd. Sec. 2, Ch. 212, L. 1963; amd. Sec. 2, Ch. 308, L. 1967; amd. Sec. 1, Ch. 322, L. 1969; amd. Sec. 1, Ch. 4, 2nd Ex. L. 1971; amd. Sec. 2, Ch. 377, L. 1974; amd. Sec. 3, Ch. 461, L. 1977; R.C.M. 1947, 93-303; amd. Sec. 2, Ch. 528, L. 1979; amd. Sec. 1, Ch. 651, L. 1979.

Compiler's Comments

Transition. Sec. 16, Ch. 528, L. 1979, provided: "A judicial officer, as defined in 1-1-202, who is occupying his judicial office on the effective date of this act shall continue to be paid expenses on the same basis as he is receiving them on the effective date of this act until the expiration of his term of office. All judicial officers who take office or begin a new term of office after the effective date of this act shall receive expenses as provided in this act."

Severability. Sec. 17, Ch. 528, L. 1979, was a severability section.

3-5-212. Salaries not to be paid until affidavit filed. The state auditor shall not draw a warrant in payment of the services of any judge of the district court until such judge shall have filed with the auditor an affidavit that no cause, motion, or other proceeding in his court remains pending and undecided for a period of 90 days after the same shall have been submitted for decision unless casualty or sickness shall have intervened.

History: En. Sec. 1, Ch. 85, L. 1917; re-en. Sec. 8815, R.C.M. 1921; re-en. Sec. 8815, R.C.M. 1935; R.C.M. 1947, 93-304(part).

3-5-213. Expenses when out of district. A judge who sits in the place of another judge in the trial or hearing of an action or proceeding in a district other than his own or in the supreme court or who attends a conference of judges in Helena called by the chief justice of the supreme court shall be paid his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, while engaged in that service as follows:

(1) his travel expenses in going from the county seat which he makes his place of residence to the place of trial, hearing, or conference and return; and

(2) his board and lodging while engaged in the trial, hearing, or conference.

History: En. Sec. 1, Ch. 3, L. 1907; re-en. Sec. 293, Rev. C. 1907; re-en. Sec. 8816, R.C.M. 1921; re-en. Sec. 8816, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1953; amd. Sec. 61, Ch. 439, L. 1975; amd. Sec. 23, Ch. 344, L. 1977; R.C.M. 1947, 93-305; amd. Sec. 16, Ch. 21, L. 1979; amd. Sec. 3, Ch. 528, L. 1979.

3-5-214. Certification and filing of expense claim. As soon as his services in connection with the trial, hearing, or conference are concluded, the judge shall certify in detail his actual and necessary travel expenses as specified in 3-5-213, and shall file the claim with the state to be processed as provided by law.

History: En. Sec. 2, Ch. 3, L. 1907; re-en. Sec. 294, Rev. C. 1907; re-en. Sec. 8817, R.C.M. 1921; re-en. Sec. 8817, R.C.M. 1935; amd. Sec. 31, Ch. 97, L. 1961; R.C.M. 1947, 93-306; amd. Sec. 17, Ch. 21, L. 1979; amd. Sec. 4, Ch. 528, L. 1979.

3-5-215. Expenses when not in county of residence. A district judge of a judicial district composed of more than one county who, for the purpose of holding court and disposing of judicial business, goes to a county of his judicial district other than the county in which he resides and therein holds court or transacts judicial business shall be paid his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred on account thereof from the time he leaves his place of residence until he returns thereto.

History: En. Sec. 1, Ch. 91, L. 1911; re-en. Sec. 8824, R.C.M. 1921; re-en. Sec. 8824, R.C.M. 1935; amd. Sec. 2, Ch. 455, L. 1973; amd. Sec. 62, Ch. 439, L. 1975; amd. Sec. 24, Ch. 344, L. 1977; R.C.M. 1947, 93-313; amd. Sec. 5, Ch. 528, L. 1979.

3-5-216. Itemized statements — verification — filing. (1) On the first of each month or within 3 days thereafter, such district judge who may desire to avail himself of the provisions of 3-5-215 shall make out an itemized claim against the state of Montana showing with dates and particulars his actual and necessary travel expenses for the preceding month.

(2) He shall verify such claim by certifying that the items of the claim are true and correct and are wholly unpaid and that the expenditures therein enumerated were made in the discharge of official business while away from home.

(3) He shall then file such claim with the state to be processed as provided by law.

History: En. Sec. 2, Ch. 91, L. 1911; re-en. Sec. 8825, R.C.M. 1921; re-en. Sec. 8825, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1951; amd. Sec. 10, Ch. 97, L. 1961; R.C.M. 1947, 93-314; amd. Sec. 6, Ch. 528, L. 1979.

Part 3

District Court Jurisdiction

3-5-301. Kinds of jurisdiction. The jurisdiction of the district court is of two kinds:

(1) original; and

(2) appellate.

History: En. Sec. 40, C. Civ. Proc. 1895; re-en. Sec. 6274, Rev. C. 1907; re-en. Sec. 8828, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 75; re-en. Sec. 8828, R.C.M. 1935; R.C.M. 1947, 93-317.

3-5-302. Original jurisdiction. (1) The district court has original jurisdiction in:

(a) all criminal cases amounting to felony;

(b) all civil and probate matters;

(c) all cases at law and in equity;

(d) all cases of misdemeanor not otherwise provided for; and

(e) all such special actions and proceedings as are not otherwise provided for.

(2) The district court has exclusive original jurisdiction in all civil actions that might result in a judgment against the state for the payment of money.

(3) The district court has the power of naturalization and of issuing papers therefor in all cases where it is authorized to do so by the laws of the United States.

(4) The district court and its judges have power to issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original remedial writs, and all writs of habeas corpus on petition by or on behalf of any person held in actual custody in their respective districts. Injunctions and writs of prohibition and habeas corpus may be issued and served on legal holidays and nonjudicial days.

History: En. Sec. 41, C. Civ. Proc. 1895; re-en. Sec. 6275, Rev. C. 1907; re-en. Sec. 8829, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 76; re-en. Sec. 8829, R.C.M. 1935; amd. Sec. 1, Ch. 11, L. 1973; R.C.M. 1947, 93-318; amd. Sec. 1, Ch. 409, L. 1979.

3-5-303. Appellate jurisdiction. The district court has appellate jurisdiction in such cases arising in justices' courts and other courts of limited jurisdiction in their respective districts as may be prescribed by law and consistent with the constitution.

History: En. Sec. 42, C. Civ. Proc. 1895; re-en. Sec. 6276, Rev. C. 1907; re-en. Sec. 8830, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 77; re-en. Sec. 8830, R.C.M. 1935; R.C.M. 1947, 93-319; amd. Sec. 7, Ch. 466, L. 1979.

3-5-304. Process. The process of the district court extends to all parts of the state.

History: En. Sec. 43, C. Civ. Proc. 1895; re-en. Sec. 6277, Rev. C. 1907; re-en. Sec. 8831, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 78; re-en. Sec. 8831, R.C.M. 1935; R.C.M. 1947, 93-320(part).

3-5-305 through 3-5-310 reserved.

3-5-311. Powers of judges at chambers. (1) The judge of the district court may at chambers:

(a) issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original and remedial writs, and all writs of habeas corpus on petition by or on behalf of any person held in actual custody in his district;

(b) grant all orders and writs which are usually granted in the first instance upon an ex parte application and hear and dispose of such orders and writs;

(c) hear and determine any matter necessary in the exercise of his powers in matters of probate or in any action or proceeding provided by law and any action in which all party defendants have made default;

(d) issue any process, make any order, and make and enter any default judgment.

(2) When default judgments are entered in default cases, as herein provided, the judge shall forward to the clerk of the court of the county in which the action is pending the judgment so made, together with a minute of the proceedings had thereon, which shall be by said clerk incorporated into the minutes of the court.

(3) If a jury is necessary, the judge may open court and obtain a jury as in other cases.

History: En. Sec. 477, p. 138, Bannack Stat.; amd. Sec. 624, p. 161, Cod. Stat. 1871; re-en. Sec. 684, 1st Div. Rev. Stat. 1879; re-en. Sec. 704, 1st Div. Comp. Stat. 1887; amd. Sec. 171, C. Civ. Proc. 1895; re-en. Sec. 6314, Rev. C. 1907; re-en. Sec. 8867, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 166; amd. Sec. 1, Ch. 79, L. 1931; re-en. Sec. 8867, R.C.M. 1935; R.C.M. 1947, 93-802.

3-5-312. Jurisdiction of judges coextensive with the state. (1) The jurisdiction of the judges of the district courts of the state of Montana in rendering and signing judgments, making findings and rendering decrees, and making orders to show cause and all ex parte orders, in chambers, shall be coextensive with the boundaries of the state of Montana as to all matters presented to or heard by them and of which they have jurisdiction.

(2) Such judgments, findings, decrees, and orders, when so rendered, made, or signed, shall have the same force and effect as to matters under their jurisdiction as if done in open court in the county in which the action, proceeding, or matter is pending or was heard.

History: En. Sec. 1, Ch. 53, L. 1923; re-en. Sec. 8867.1, R.C.M. 1935; R.C.M. 1947, 93-803.

Part 4

Terms and Location of District Courts

3-5-401. Terms of court. (1) The district court of each county which is a judicial district by itself has no terms and must always be open for the transaction of business, except on legal holidays and nonjudicial days.

(2) (a) In each district where two or more counties are united, the judge thereof must fix the term of court in each county in his district and there must be at least four terms a year in each county. Any order of the judge of such district fixing terms of court shall be filed in the office of the clerk of the district court in each county of his district and shall remain in effect until further order of the judge.

(b) Nothing in this section shall be construed to prevent the calling of a special term of court, with or without a jury, when in the opinion of the presiding judge the same is necessary.

(c) The district judge may adjourn a term of district court in one county to a future day certain and in the meantime hold court in another county.

History: En. Sec. 38, C. Civ. Proc. 1895; amd. Sec. 1, p. 156, L. 1901; re-en. Sec. 6272, Rev. C. 1907; re-en. Sec. 8826, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 73; re-en. Sec. 8826, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1959; R.C.M. 1947, 93-315(part).

3-5-402. Adjournments — conduct of business in multicounty districts. (1) Adjournments from day to day or from time to time are to be construed as recesses in the session or term and shall not prevent the court from sitting at any time.

(2) In districts where two or more counties are united, court may be held, causes tried with or without a jury, and business transacted in any and all

of the counties of the district continuously and simultaneously, with or without recesses, and without regard to the beginning or ending of any of the terms in any of the counties of the district.

(3) The judge of such district may hold court in one county of such district, try causes with or without a jury, and transact business, while at the same time court may be held, causes tried with or without a jury, and business transacted in any other county of such district by the same judge or by any other district judge of the state, when requested or assigned thereto under any of the provisions of the statutes of Montana.

History: En. Sec. 39, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 184, L. 1907; re-en. Sec. 6273, Rev. C. 1907; re-en. Sec. 8827, R.C.M. 1921; re-en. Sec. 8827, R.C.M. 1935; amd. Sec. 2, Ch. 144, L. 1959; R.C.M. 1947, 93-316.

3-5-403. Terms and departments in multijudge districts. (1) In each judicial district which has now or may hereafter have more than one judge, as many terms or sessions of court may be held at the same time as there are judges in the district, either elected or appointed to, called into, or assigned to the performance of the duties of holding court therein.

(2) The judges elected or appointed to hold office in each judicial district having more than one judge must divide the court into departments, prescribe the order of business, and make rules for the government of such court. Each department shall be numbered, and each judge shall be assigned to one of such numbered departments.

(3) The judges must apportion the business of the court among themselves as equally as may be. In case of their failure for any cause to make such apportionment or to assign each judge to a numbered department, the supreme court, upon application of any interested person, shall make an order apportioning such business and assigning each judge to a numbered department and cause the same to be entered upon the minute book of the district court in each county in such district. Such order shall remain in full force and effect until modified or repealed by the authority making it. The failure or refusal of any district judge to carry out the terms of such order shall constitute a contempt of the supreme court.

(4) The principal office of the judgeship in the 4th district created by Chapter 542, L. 1979, shall be in Lake County. The chief judge of the district shall have authority to assign a judge to such office.

History: En. Sec. 44, C. Civ. Proc. 1895; re-en. Sec. 6278, Rev. C. 1907; amd. Sec. 1, Ch. 7, L. 1915; re-en. Sec. 8832, R.C.M. 1921; re-en. Sec. 8832, R.C.M. 1935; amd. Sec. 1, Ch. 229, L. 1961; R.C.M. 1947, 93-321; (3)En. Sec. 3, Ch. 542, L. 1979.

3-5-404. When sheriff to provide facilities. (1) If suitable rooms for holding the district court and chambers of the judge of said court be not provided in any county by the board of county commissioners thereof, together with the attendants, furniture, fuel, lights, and stationery sufficient for the transaction of business, the court or the judge thereof may direct the sheriff of the county to provide such rooms, attendants, furniture, fuel, lights, and stationery.

(2) The expenses incurred, certified by the judge to be correct, are a charge against the county treasury and must be paid out of the general fund thereof.

History: En. Sec. 142, C. Civ. Proc. 1895; re-en. Sec. 6302, Rev. C. 1907; re-en. Sec. 8856, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 144; re-en. Sec. 8856, R.C.M. 1935; R.C.M. 1947, 93-513.

3-5-405. Change of place of holding court in emergency. (1) The judge of the district court authorized to hold or preside at a court appointed to be held at a particular place may, by an order filed with the clerk and published as he may prescribe, direct that the court be held or continued at any place in the county other than that appointed when war, insurrection, pestilence, or other public calamity, or the danger thereof, or the destruction or danger of the public building appointed for the holding the court may render it necessary.

(2) He may, in the same manner, revoke the order and, in his discretion, appoint another place in the same county for holding the court.

History: En. Sec. 140, C. Civ. Proc. 1895; re-en. Sec. 6300, Rev. C. 1907; re-en. Sec. 8854, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 142; re-en. Sec. 8854, R.C.M. 1935; R.C.M. 1947, 93-511.

3-5-406. Parties to appear at place appointed. When the court is held at the place appointed, as provided in 3-5-405, every person held to appear at the court must appear at the place so appointed.

History: En. Sec. 141, C. Civ. Proc. 1895; re-en. Sec. 6301, Rev. C. 1907; re-en. Sec. 8855, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 143; re-en. Sec. 8855, R.C.M. 1935; R.C.M. 1947, 93-512.

3-5-407. Sheriff to act as crier. The sheriff in attendance upon district court must act as the crier thereof, call the parties and witnesses and all other persons bound to appear before the court, and make proclamation of the opening and adjournment of the court and of any other matter under its direction.

History: En. Sec. 4397, Pol. C. 1895; re-en. Sec. 3026, Rev. C. 1907; re-en. Sec. 4790, R.C.M. 1921; Cal. Pol. C. Sec. 4189; re-en. Sec. 4790, R.C.M. 1935; R.C.M. 1947, 16-2718; amd. Sec. 18, Ch. 21, L. 1979.

Part 5

Clerk of the District Court

3-5-501. General duties. The clerk of the district court, in addition to keeping the records and performing the duties prescribed elsewhere, shall:

(1) take charge of and safely keep or dispose of according to law all books, papers, and records which are filed or deposited in his office;

(2) act as clerk of the district court and attend each term or session thereof and upon the judges at chambers when required;

(3) issue all process and notices required to be issued;

(4) enter all orders, judgments, and decrees proper to be entered;

(5) keep in each court a register of actions, as provided in 3-5-504;

(6) keep for the district court two separate indexes, one labeled "general index—plaintiffs" and the other labeled "general index—defendants", which shall be in the form prescribed in 3-5-502;

(7) keep a minute book, which must contain the daily proceedings of court, may be signed by the clerk, and must be indexed in the names of both defendant and plaintiff;

(8) keep a fee book, in which must be shown in an itemized form all fees that he has received for any services rendered in his capacity as clerk.

History: Ap. p. Sec. 4440, Pol. C. 1895; re-en. Sec. 3048, Rev. C. 1907; re-en. Sec. 4815, R.C.M. 1921; Cal. Pol. C. Sec. 4204; re-en. Sec. 4815, R.C.M. 1935; amd. Sec. 10, Ch. 344, L. 1977; Sec. 16-3001, R.C.M. 1947; Ap. p. Sec. 4441, Pol. C. 1895; re-en. Sec. 3049, Rev. C. 1907; re-en. Sec.

4816, R.C.M. 1921; re-en. Sec. 4816, R.C.M. 1935; Sec. 16-3002, R.C.M. 1947; R.C.M. 1947, 16-3001(part), 16-3002.

3-5-502. Indexes to court records. Each clerk of court in each county of the respective judicial districts of the state shall keep, in addition to the records required by law, a book called "General Index to Court Records" and also a second book to be called "Inverse General Index to Court Records". The pages of the General Index shall be divided into 18 columns, and the pages of the Inverse General Index shall be divided into five columns, with heads to the respective columns as follows:

For the General Index thus:

No.
Plaintiff
Defendant
Nature of Action
Date Begun
Entries in Court Record
Pages
Date Dismissed
Date of Judgment
Amount of Judgment
Book (Judgment Record)
Page (Judgment Record)
Book (Judgment Docket)
Page (Judgment Docket)
Execution Date Issue
Book (Execution Book)
Page (Execution Book)
Book (Order of Sale)
Page (Order of Sale)
Date Appealed
Remittitur Date Filed
Remarks

For the Inverse General Index thus:

No.
Defendants
Plaintiffs
Nature of Action
Date Begun

History: En. Sec. 4442, Pol. C. 1895; re-en. Sec. 3050, Rev. C. 1907; re-en. Sec. 4817, R.C.M. 1921; re-en. Sec. 4817, R.C.M. 1935; R.C.M. 1947, 16-3003.

3-5-503. Duties concerning indexes. Said clerk shall cause to be made in each of said index books correct entries, under the appropriate headings, of each and every action begun in the court of which he is clerk, entering them alphabetically by the name of the plaintiff in the General Index and alphabetically by the name of the defendants in the Inverse General Index, continuing to make such entries in the manner aforesaid from time to time as the progress of the case may require.

History: En. Sec. 4443, Pol. C. 1895; re-en. Sec. 3051, Rev. C. 1907; re-en. Sec. 4818, R.C.M. 1921; re-en. Sec. 4818, R.C.M. 1935; R.C.M. 1947, 16-3004.

3-5-504. Register of actions. The clerk must keep among the records of the court a register of actions. He must enter therein the title of the action with brief notes under it, from time to time, of all papers filed and proceedings had therein. The register must also state the names of the attorneys and all fees charged in each action.

History: Ap. p. Sec. 499, p. 233, L. 1867; re-en. Sec. 576, p. 153, Cod. Stat. 1871; re-en. Sec. 517, p. 176, L. 1877; re-en. Sec. 517, 1st Div. Rev. Stat. 1879; re-en. Sec. 534, 1st Div. Comp. Stat. 1887; re-en. Sec. 1896, C. Civ. Proc. 1895; re-en. Sec. 7189, Rev. C. 1907; re-en. Sec. 9822, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1052; re-en. Sec. 9822, R.C.M. 1935; Sec. 93-8707, R.C.M. 1947; Ap. p. Sec. 4440, Pol. C. 1895; re-en. Sec. 3048, Rev. C. 1907; re-en. Sec. 4815, R.C.M. 1921; Cal. Pol. C. Sec. 4204; re-en. Sec. 4815, R.C.M. 1935; amd. Sec. 10, Ch. 344, L. 1977; Sec. 16-3001, R.C.M. 1947; R.C.M. 1947, 16-3001(part), 93-8707.

3-5-505. Register of criminal actions. The clerk of the district court shall keep a book called "Register of Criminal Actions", which must have a proper index and in which must be entered the title and number of the action with a memorandum of every paper filed and order or proceeding had therein, with the date thereof, and a memorandum of the name of every witness, the number of days he attended, and his witness fees.

History: En. Sec. 4440, Pol. C. 1895; re-en. Sec. 3048, Rev. C. 1907; re-en. Sec. 4815, R.C.M. 1921; Cal. Pol. C. Sec. 4204; re-en. Sec. 4815, R.C.M. 1935; amd. Sec. 10, Ch. 344, L. 1977; R.C.M. 1947, 16-3001(part).

3-5-506. Index of bonds in criminal cases. Clerks of the district courts of the counties in the state of Montana shall keep proper books for indexing bonds given in criminal cases. All bonds filed therein shall be entered showing the title and docket number of the case in which such bond is filed, the names of principals and sureties on such bonds in alphabetical order, the date and amount of the bond, and upon its release, the date of the order or authority for such release.

History: En. Sec. 1, Ch. 47, L. 1923; re-en. Sec. 4818.1, R.C.M. 1935; R.C.M. 1947, 16-3005.

3-5-507. Judgment book. The clerk must keep with the records of the court a book to be called the "Judgment Book", in which judgments must be entered.

History: En. Sec. 201, p. 174, L. 1867; re-en. Sec. 241, p. 77, Cod. Stat. 1871; re-en. Sec. 292, p. 115, L. 1877; re-en. Sec. 292, 1st Div. Rev. Stat. 1879; re-en. Sec. 304, 1st Div. Comp. Stat. 1887; amd. Sec. 1194, C. Civ. Proc. 1895; re-en. Sec. 6804, Rev. C. 1907; re-en. Sec. 9407, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 668; re-en. Sec. 9407, R.C.M. 1935; R.C.M. 1947, 93-5705.

3-5-508. Docket. The docket is a book which the clerk keeps in his office, with each page divided into eight columns and headed as follows: judgment debtors; judgment creditors; judgment, time of entry; where entered in judgment book; appeals, when taken; judgment of appellate court; satisfaction of judgment, when entered. If judgment be for the recovery of money or damages, the amount must be stated in the docket under the head of judgment. If the judgment be for any other relief, a memorandum of the general character of the relief granted must be stated. The names of the defendants must be entered in alphabetical order.

History: En. Sec. 205, p. 174, L. 1867; re-en. Sec. 245, p. 78, Cod. Stat. 1871; re-en. Sec. 296, p. 116, L. 1877; re-en. Sec. 296, 1st Div. Rev. Stat. 1879; re-en. Sec. 308, 1st Div. Comp. Stat. 1887; re-en. Sec. 1198, C. Civ. Proc. 1895; re-en. Sec. 6808, Rev. C. 1907; re-en. Sec. 9411, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 672; re-en. Sec. 9411, R.C.M. 1935; R.C.M. 1947, 93-5709.

3-5-509. Docket to be available for inspection. The docket kept by the clerk is open at all times during office hours for the inspection of the public, without charge. The clerk must arrange the several dockets kept by him in such a manner as to facilitate their inspection.

History: En. Sec. 206, p. 174, L. 1867; re-en. Sec. 246, p. 78, Cod. Stat. 1871; re-en. Sec. 297, p. 116, L. 1877; re-en. Sec. 297, 1st Div. Rev. Stat. 1879; re-en. Sec. 309, 1st Div. Comp. Stat. 1887; re-en. Sec. 1199, C. Civ. Proc. 1895; re-en. Sec. 6809, Rev. C. 1907; re-en. Sec. 9412, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 673; re-en. Sec. 9412, R.C.M. 1935; R.C.M. 1947, 93-5711.

3-5-510. Duties relating to jurors and witnesses. The clerk of the district court shall:

(1) keep a book called "Book of Jurors' Certificates", which must contain the blank certificates and stubs to be filled as provided in 3-15-204;

(2) keep a "Witness Book", which must contain blank certificates and stubs to be filled as provided in 3-5-511;

(3) keep a record of the attendance of all jurors and witnesses in criminal actions and compute the amount due them for mileage (the distance from any point to the county seat must be determined by the shortest traveled route).

History: Ap. p. Sec. 4440, Pol. C. 1895; re-en. Sec. 3048, Rev. C. 1907; re-en. Sec. 4815, R.C.M. 1921; Cal. Pol. C. Sec. 4204; re-en. Sec. 4815, R.C.M. 1935; amd. Sec. 10, Ch. 344, L. 1977; Sec. 16-3001, R.C.M. 1947; Ap. p. Sec. 4645, Pol. C. 1895; re-en. Sec. 3179, Rev. C. 1907; re-en. Sec. 4937, R.C.M. 1921; re-en. Sec. 4937, R.C.M. 1935; Sec. 25-405, R.C.M. 1947; Ap. p. Sec. 4651, Pol. C. 1895; re-en. Sec. 3185, Rev. C. 1907; re-en. Sec. 4940, R.C.M. 1921; re-en. Sec. 4940, R.C.M. 1935; Sec. 25-408, R.C.M. 1947; R.C.M. 1947, 16-3001(part), 25-405(part), 25-408.

3-5-511. Procedure in reference to witnesses' certificates. (1) The witnesses in criminal actions must report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk must give to each witness a certificate taken from a book containing a stub with like designations, signed by the clerk under seal, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due.

(3) On presentation of such certificate to the county treasurer, the amount specified in the certificate must be paid out of the general fund.

History: En. Sec. 4649, Pol. C. 1895; re-en. Sec. 3183, Rev. C. 1907; re-en. Sec. 4938, R.C.M. 1921; re-en. Sec. 4938, R.C.M. 1935; R.C.M. 1947, 25-406.

3-5-512. Statement to board of county commissioners concerning witnesses. The clerk must make a detailed statement containing a list of the witnesses and the amount of fees and mileage earned by each and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board. No quarterly salary must be paid to the clerk until such statement is filed. The board must examine the statement and see that it is correct.

History: En. Sec. 4650, Pol. C. 1895; re-en. Sec. 3184, Rev. C. 1907; re-en. Sec. 4939, R.C.M. 1921; re-en. Sec. 4939, R.C.M. 1935; R.C.M. 1947, 25-407.

3-5-513. Probate records. The clerk of the district court shall:

(1) keep a book called "Record of Probate Proceedings", which must contain all the orders and proceedings of the district court sitting in probate

matters and must be indexed in the names of the deceased person and the executor or administrator or the names of the guardian and the ward;

(2) keep a book called the "Probate Record Book", in which must be recorded all wills, bonds, letters of administration, letters testamentary, and other papers as prescribed by law and which must be indexed in the same manner as the Record of Probate Proceedings;

(3) keep a book called "Register of Probate and Guardianship Proceedings", in which must be entered the name of the estate and the register number with a memorandum of every paper filed and order or proceeding had therein, with the date thereof, and a memorandum of the fees charged.

History: En. Sec. 4440, Pol. C. 1895; re-en. Sec. 3048, Rev. C. 1907; re-en. Sec. 4815, R.C.M. 1921; Cal. Pol. C. Sec. 4204; re-en. Sec. 4815, R.C.M. 1935; amd. Sec. 10, Ch. 344, L. 1977; R.C.M. 1947, 16-3001(part).

3-5-514. Naturalization records. The clerk of the district court shall keep two books:

(1) The first book must be labeled "Declarations of Intention to Become a Citizen of the United States" and must have entered in it, in alphabetical order, the name of each person who from the organization of the court has declared his intention to become a citizen of the United States, with the date of such declaration.

(2) The second book must be labeled "Naturalization—Final Papers" and must have entered in it, in alphabetical order, the name of each person who has been admitted as a citizen of the United States by the court of which he is clerk and, in a separate column opposite each name, the country of which the person was formerly a citizen or subject, the date of his admission, and the page of the minute book or book of record containing the order admitting him as a citizen.

History: En. Sec. 4440, Pol. C. 1895; re-en. Sec. 3048, Rev. C. 1907; re-en. Sec. 4815, R.C.M. 1921; Cal. Pol. C. Sec. 4204; re-en. Sec. 4815, R.C.M. 1935; amd. Sec. 10, Ch. 344, L. 1977; R.C.M. 1947, 16-3001(part); amd. Sec. 19, Ch. 21, L. 1979.

3-5-515. Fees for naturalization. The clerk of the district court shall collect from every person to whom a final certificate of naturalization is issued, at the time the same is issued, all fees authorized by law. All fees must be accounted for and paid to the county treasurer, as provided by 7-4-2511(1), and shall be credited to the general fund of the county.

History: En. Sec. 1, p. 50, L. 1899; re-en. Sec. 3146, Rev. C. 1907; re-en. Sec. 4894, R.C.M. 1921; re-en. Sec. 4894, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1967; amd. Sec. 1, Ch. 171, L. 1969; R.C.M. 1947, 25-210.

Part 6

Court Reporters

3-5-601. Appointment — oath. The judge of a district court may appoint a reporter for such court who is an officer of the court and holds his office during the pleasure of the judge appointing him. He must subscribe the constitutional oath of office and file the same with the clerk of the court. In districts where there are two or more judges, each judge may appoint a reporter.

History: Earlier acts were Secs. 1-3, pp. 393, 394, L. 1877; re-en. Secs. 1176-1178, 5th Div. Rev. Stat. 1879; amd. Secs. 1977-1981, 5th Div. Comp. Stat. 1887.

This section en. Sec. 370, C. Civ. Proc. 1895; re-en. Sec. 6373, Rev. C. 1907; re-en. Sec. 8928, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 269; re-en. Sec. 8928, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1961; R.C.M. 1947, 93-1901.

3-5-602. Salary and expenses — apportionment. (1) Each reporter is entitled to receive an annual salary of not less than $12,500 or more than $18,000 and no other compensation except as provided in 3-5-604. The salary shall be set by the judge in the district in which the reporter works. It is payable in monthly installments out of the general funds of the counties comprising the district for which the reporter is appointed, in proportion to the number of civil and criminal actions commenced in the district court in and for each county in the preceding year. The judge of the district shall, on January 1 of each year or as soon thereafter as possible, apportion the amount of the salary to be paid by each county in his district on the basis prescribed in this subsection.

(2) In judicial districts comprising more than one county, the reporter is allowed, in addition to the salary and fees provided for in subsection (1), his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto. The expenses shall be apportioned and payable in the same way as the salary.

History: En. Sec. 375, C. Civ. Proc. 1895; re-en. Sec. 6378, Rev. C. 1907; amd. Sec. 1, Ch. 80, L. 1909; re-en. Sec. 8933, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 271 and 274; amd. Sec. 1, Ch. 36, L. 1927; re-en. Sec. 8933, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1945; amd. Sec. 1, Ch. 49, L. 1951; amd. Sec. 1, Ch. 125, L. 1953; amd. Sec. 1, Ch. 76, L. 1955; amd. Sec. 6, Ch. 22, L. 1961; amd. Sec. 1, Ch. 114, L. 1965; amd. Sec. 1, Ch. 221, L. 1967; amd. Sec. 1, Ch. 192, L. 1969; amd. Sec. 1, Ch. 183, L. 1973; amd. Sec. 1, Ch. 373, L. 1975; amd. Sec. 45, Ch. 344, L. 1977; R.C.M. 1947, 93-1906; amd. Sec. 7, Ch. 528, L. 1979; amd. Sec. 1, Ch. 647, L. 1979.

Compiler's Comments

Transition. Sec. 16, Ch. 528, L. 1979, provided: "A judicial officer, as defined in 1-1-202, who is occupying his judicial office on the effective date of this act shall continue to be paid expenses on the same basis as he is receiving them on the effective date of this act until the expiration of his term of office. All judicial officers who take office or begin a new term of office after the effective date of this act shall receive expenses as provided in this act."

Severability. Sec. 17, Ch. 528, L. 1979, was a severability section.

3-5-603. Duties. (1) Each reporter must, under the direction of the judge, attend all sittings of the court and take full stenographic notes of the testimony and of all proceedings given or had thereat except when the judge dispenses with his services in a particular cause or with respect to a portion of the proceedings therein. The reporter must file with the clerk forthwith the original stenographic notes taken upon a trial or hearing required to be taken by this subsection.

(2) All objections made during the trial or hearing and the rulings, decisions, and opinions of the court must be written out at length or printed in type by the reporter and filed with the clerk immediately after the close of the trial or hearing.

History: Ap. p. Sec. 371, C.Civ. Proc. 1895; re-en. Sec. 6374, Rev. C. 1907; re-en. Sec. 8929, R.C.M. 1921; re-en. Sec. 8929, R.C.M. 1935; amd. Sec. 2, Ch. 22, L. 1961; Sec. 93-1902, R.C.M. 1947; Ap. p. Sec. 372, C. Civ. Proc. 1895; re-en. Sec. 6375, Rev. C. 1907; re-en. Sec. 8930, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 269; re-en. Sec. 8930, R.C.M. 1935; amd. Sec. 3, Ch. 22, L. 1961; amd. Sec. 42, Ch. 344, L. 1977; Sec. 93-1903, R.C.M. 1947; R.C.M. 1947, 93-1902, 93-1903.

3-5-604. Copies of proceedings. (1) Each reporter must furnish, upon request, with all reasonable diligence, to the defendant in a criminal case or a party or his attorney in a civil case in which he has attended the trial or hearing a copy, written out at length or in narrative form from his stenographic notes, of the testimony and proceedings upon the trial or hearing or a part thereof, upon payment by the person requiring the same of 7 ½ cents per folio.

(2) If the county attorney, attorney general, or judge requires a copy in a criminal case, the reporter is entitled to his fees therefor, but he must furnish it. Upon furnishing it, he shall receive a certificate of the sum to which he is so entitled, which is a county charge and must be paid by the county treasurer upon the certificate like other county charges.

(3) If the judge requires a copy in a civil case to assist him in rendering a decision, the reporter must furnish the same without charge therefor. In civil cases, all transcripts required by the county shall be furnished without cost.

(4) If it appears to the judge that a defendant in a criminal case is unable to pay for a copy, it shall be furnished to him and paid for by the county.

History: **En. Sec. 373, C. Civ. Proc. 1895; re-en. Sec. 6376, Rev. C. 1907; re-en. Sec. 8931, R.C.M. 1921; re-en. Sec. 8931, R.C.M. 1935; amd. Sec. 4, Ch. 22, L. 1961; amd. Sec. 1, Ch. 163, L. 1963; amd. Sec. 44, Ch. 344, L. 1977; R.C.M. 1947, 93-1904.**

3-5-605 through 3-5-610 reserved.

3-5-611. Reporter pro tempore. (1) The reporter of any district court must attend to the duties of his office in person except when excused for good and sufficient reason by order of the court, which order must be entered upon the minutes of the court. Employment in his professional capacity elsewhere is not a good and sufficient reason for such excuse.

(2) When the reporter of any court has been excused in the manner provided in this section, the court may appoint a reporter pro tempore, who must take the same oath and perform the same duties and receive the same compensation during the time of his employment as the regular reporter.

History: **En. Sec. 376, C. Civ. Proc. 1895; re-en. Sec. 6379, Rev. C. 1907; re-en. Sec. 8934, R.C.M. 1921; re-en. Sec. 8934, R.C.M. 1935; amd. Sec. 7, Ch. 22, L. 1961; R.C.M. 1947, 93-1907.**

3-5-612. Reporter's report prima facie evidence. The report of the reporter or reporter pro tempore of any court, duly appointed and sworn, when written out in longhand or printed in type and certified as being a correct transcript of the testimony and proceedings in the case, is prima facie a correct statement of such testimony and proceedings.

History: **En. Sec. 377, C. Civ. Proc. 1895; re-en. Sec. 6380, Rev. C. 1907; re-en. Sec. 8935, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 273; re-en. Sec. 8935, R.C.M. 1935; amd. Sec. 8, Ch. 22, L. 1961; R.C.M. 1947, 93-1908.**

CHAPTER 6

MUNICIPAL COURTS

Part 1 — General Provisions

Section

3-6-101. Establishment of the court.
3-6-102. Abolition of city court.

3-6-103. Jurisdiction.
3-6-104. Powers and duties of the court.
3-6-105. Courtroom and supplies.
3-6-106. Sessions of the court.

Part 2 — Municipal Court Judges

3-6-201. Election — term of office.
3-6-202. Qualifications.
3-6-203. Salary.
3-6-204. Disqualification — judge pro tem.

Part 3 — Conduct of Court Business

3-6-301. Clerk of the court.
3-6-302. Records.
3-6-303. Officers of the court.

Part 1

General Provisions

3-6-101. Establishment of the court. (1) All cities in the state of Montana with a population of 10,000 or more, according to the last federal census, may have a court known as the municipal court of the city of (designating the name of the city) of the state of Montana. The court shall be a court of record.

(2) The provisions of this chapter apply only after the governing body of the city has elected by a two-thirds majority vote to adopt them by ordinance and, in the ordinance, has provided the manner in which and time when the municipal court is to be established and assume continuing jurisdiction over all pending city court cases. The ordinance must be consistent with the provisions of this chapter.

History: En. Sec. 1, Ch. 177, L. 1935; re-en. Sec. 5094.1, R.C.M. 1935; amd. Sec. 1, Ch. 429, L. 1977; R.C.M. 1947, 11-1701.

3-6-102. Abolition of city court. In cities in which a municipal court is established, the office of city judge is hereby abolished.

History: En. Sec. 16, Ch. 177, L. 1935; re-en. Sec. 5094.16, R.C.M. 1935; R.C.M. 1947, 11-1716.

3-6-103. Jurisdiction. Said court shall have jurisdiction coordinate and coextensive with the justices' courts of the county wherein said city is located and shall, in addition thereto, have exclusive original jurisdiction of all actions and proceedings, both civil and criminal, mentioned and provided for in 3-11-103. Such municipal courts shall also have concurrent jurisdiction with the district court within their respective counties in forcible entry and unlawful detainer.

History: En. Sec. 2, Ch. 177, L. 1935; re-en. Sec. 5094.2, R.C.M. 1935; R.C.M. 1947, 11-1702.

3-6-104. Powers and duties of the court. (1) Except as otherwise provided by this chapter, chapter 30 of Title 25, and part 4 of chapter 17 of Title 46, the municipal court shall have in matters within its jurisdiction all the powers and duties of district judges in like cases. The court may make and alter rules for the conduct of its business and prescribe forms of process conformable to law.

(2) The municipal court shall establish rules for appeal to district court. The rules are subject to the supreme court's rulemaking and supervisory authority.

History: (1)En. Sec. 20, Ch. 177, L. 1935; re-en. Sec. 5094.19, R.C.M. 1935; Sec. 11-1719, R.C.M. 1947; (2)En. Sec. 17, Ch. 177, L. 1935; re-en. Sec. 5094.17, R.C.M. 1935; amd. Sec. 9, Ch. 429, L. 1977; Sec. 11-1717, R.C.M. 1947; R.C.M. 1947, 11-1717(3), 11-1719(part).

3-6-105. Courtroom and supplies. A room for the municipal court, with necessary furniture, fixtures, and supplies, shall be provided by the city wherein the court is located.

History: En. Sec. 5, Ch. 177, L. 1935; re-en. Sec. 5094.5, R.C.M. 1935; amd. Sec. 5, Ch. 429, L. 1977; R.C.M. 1947, 11-1705.

3-6-106. Sessions of the court. The municipal court shall be in continuous session from 9 a.m. to noon and from 1 p.m. to 4 p.m. on every day except nonjudicial days. The judge may designate additional hours as he, in his discretion, sees fit.

History: En. Sec. 8, Ch. 177, L. 1935; re-en. Sec. 5094.8, R.C.M. 1935; amd. Sec. 6, Ch. 429, L. 1977; R.C.M. 1947, 11-1708.

Part 2

Municipal Court Judges

3-6-201. Election — term of office. (1) One judge of each municipal court shall be elected at the general city election. The judge's term shall commence on the first Monday in January following the election. The judge shall hold office for the term of 4 years and until his successor is elected and qualified.

(2) All elections of municipal judges are governed by the laws applicable to the election of nonpartisan city officials.

History: En. Sec. 3, Ch. 177, L. 1935; re-en. Sec. 5094.3, R.C.M. 1935; amd. Sec. 2, Ch. 429, L. 1977; R.C.M. 1947, 11-1703; amd. Sec. 376, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

3-6-202. Qualifications. A municipal court judge must have the same qualifications as a judge of a district court, as set forth in Article VII, section 9, of the 1972 Montana constitution, except that a municipal court judge need only be admitted to the practice of law in Montana for at least 2 years prior to the date of appointment or election. A municipal court judge must be a resident and voter in the city in which he is elected at the time of his election.

History: En. Sec. 4, Ch. 177, L. 1935; re-en. Sec. 5094.4, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1974; amd. Sec. 3, Ch. 429, L. 1977; R.C.M. 1947, 11-1704(1).

3-6-203. Salary. The salary of the municipal court judge shall be set by city ordinance and shall be payable monthly by the city treasurer. Actual and necessary expenses for the municipal court judge shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties.

History: En. Sec. 4, Ch. 177, L. 1935; re-en. Sec. 5094.4, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1974; amd. Sec. 3, Ch. 429, L. 1977; R.C.M. 1947, 11-1704(2); amd. Sec. 8, Ch. 528, L. 1979.

Compiler's Comments

Transition. Sec. 16, Ch. 528, L. 1979, provided: "A judicial officer, as defined in 1-1-202, who is occupying his judicial office on the effective date of this act shall continue to be paid expenses on the same basis as he is receiving them on the effective date of this act until the expiration of his term of office. All judicial officers who take office or begin a new term of office after the effective date of this act shall receive expenses as provided in this act."

Severability. Sec. 17, Ch. 528, L. 1979, was a severability section.

3-6-204. Disqualification — judge pro tem. When a judge of a municipal court has been disqualified or is sick or unable to act, he shall call in some practicing attorney of the county in which his court is located, who shall be judge pro tem with the same powers for the purposes of the cause as the judge of the court.

History: En. Sec. 13, Ch. 177, L. 1935; re-en. Sec. 5094.13, R.C.M. 1935; R.C.M. 1947, 11-1713; amd. Sec. 20, Ch. 21, L. 1979.

Part 3

Conduct of Court Business

3-6-301. Clerk of the court. The city clerk of the city in which said court is located shall be ex officio clerk of such court.

History: En. Sec. 6, Ch. 177, L. 1935; re-en. Sec. 5094.6, R.C.M. 1935; R.C.M. 1947, 11-1706(part).

3-6-302. Records. The records of the court shall be kept by the clerk. Such records in civil causes shall conform as nearly as possible to the records of district courts. In criminal causes, in cases arising under city ordinances, and in cases mentioned in 3-11-103, the records shall be similar to the records now kept in justices' courts.

History: En. Sec. 6, Ch. 177, L. 1935; re-en. Sec. 5094.6, R.C.M. 1935; R.C.M. 1947, 11-1706(part); amd. Sec. 21, Ch. 21, L. 1979.

3-6-303. Officers of the court. (1) The chief of police of the city shall be the executive officer of such court. He shall serve all process and execute all orders of the court, either in person or by subordinate police officer, who shall execute process in his name.

(2) The chief of police, with the approval of the judge, shall appoint one or more policemen as court officers, one of whom shall attend the sessions of the court and perform all duties in connection therewith which the judge may require.

History: En. Sec. 7, Ch. 177, L. 1935; re-en. Sec. 5094.7, R.C.M. 1935; R.C.M. 1947, 11-1707.

CHAPTER 7

WATER COURTS

Part 1 — Water Divisions

Section
3-7-101. Water divisions.
3-7-102. Water divisions boundaries.

3-7-103. Promulgation of rules and prescription of forms.

Part 2 — Water Judges

3-7-201. Designation of water judge.
3-7-202. Term of office.
3-7-203. Vacancies.
Sections 3-7-204 through 3-7-210 reserved.
3-7-211. Appointment of water commissioners.
3-7-212. Enforcement of final decree.
3-7-213. Designation of alternate judge.

Part 3 — Water Masters

3-7-301. Appointment of water masters — removal.
3-7-302. Salary, expenses, and retirement of water masters.
Sections 3-7-303 through 3-7-310 reserved.
3-7-311. Duties of water masters.

Part 4 — Disqualification

3-7-401. Definitions.
3-7-402. Disqualification of water judge or master.
3-7-403. Waiver of disqualification.
3-7-404. Procedure exclusive.

Part 5 — Jurisdiction

3-7-501. Jurisdiction.
3-7-502. Jurisdictional disputes.

Part 1

Water Divisions

3-7-101. Water divisions. To adjudicate existing water rights water divisions are established as defined in 3-7-102. A water division shall be presided over by a water judge.

History: En. Sec. 1, Ch. 697, L. 1979.

Compiler's Comments

Purpose. Subsection (1) of sec. 1, Ch. 697, L. 1979, provided: "[This act] amends the Montana Water Use Act to expedite and facilitate the adjudication of existing water rights."

Codification. Sec. 35, Ch. 697, L. 1979, provided: "(1) Sections 1 through 10 of this act are intended to be codified as an integral part of Title 3, and the provisions contained in Title 3 apply to this act.

(2) Sections 11 through 27 are intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions contained in Title 85, chapter 2, apply to this act.

(3) If the provisions of this act are not codified as stated above, the code commissioner shall add to the MCA, if necessary, statutory language to convey the intent of this section."

Because of rearrangement of the new material, Ch. 697 is now codified in Title 3, chapter 7; Title 85, chapter 2, parts 2 and 7; and 2-15-212.

Effective date. "This act is effective on passage and approval." Approved May 11, 1979.

Severability. Section 36, Ch. 697, L. 1979, was a severability section.

3-7-102. Water divisions boundaries. There are four water divisions whose boundaries are formed by the natural divides between drainages and the borders of the state of Montana and which are described as follows:

(1) The Yellowstone River Basin water division consists of those areas drained by the Yellowstone and Little Missouri Rivers and any remaining areas in Carter County.

(2) The lower Missouri River Basin water division consists of those areas drained by the Missouri River from below the mouth of the Marias River and any remaining areas in Glacier and Sheridan Counties.

(3) The upper Missouri River Basin water division consists of those areas drained by the Missouri River to below the mouth of the Marias River.

(4) The Clark Fork River Basin water division consists of the areas drained by the Clark Fork River, the Kootenai River, and any remaining areas in Lincoln County.

History: **En. Sec. 2, Ch. 697, L. 1979.**

3-7-103. Promulgation of rules and prescription of forms. As soon as practicable the Montana supreme court may promulgate special rules of practice and procedure and shall prescribe forms for use in connection with this chapter and Title 85, chapter 2, parts 2 and 7, in consultation with the water judge and the department.

History: **En. Sec. 10, Ch. 697, L. 1979.**

Part 2

Water Judges

3-7-201. Designation of water judge. (1) A water judge shall be designated within 30 days after May 11, 1979, for each water division by a majority vote of a committee composed of the district judge from each single judge judicial district and the chief district judge from each multiple judge judicial district, wholly or partly within the division. A water judge must be a district judge of a judicial district wholly or partly within the water division. A district judge may not sit as a water judge in more than one division.

(2) A water judge, when presiding over a water division, presides as district judge in and for each judicial district wholly or partly within the water division.

History: **En. Sec. 1, Ch. 697, L. 1979.**

3-7-202. Term of office. The term of office for water judges is from the date of initial appointment as provided in 3-7-201 to June 30, 1985. After June 30, 1985, the term of office of a water judge is 4 years, subject to continuation of the water divisions by the legislature.

History: **En. Sec. 9, Ch. 697, L. 1979.**

3-7-203. Vacancies. If a vacancy occurs, it shall be filled in the manner provided in 3-7-201 for the initial designation of a water judge. A vacancy is created when a water judge dies, retires, is not elected to a subsequent term, forfeits his judicial position, is removed, or is otherwise unable to complete his term as a district judge.

History: **En. Sec. 8, Ch. 697, L. 1979.**

3-7-204 through 3-7-210 reserved.

3-7-211. Appointment of water commissioners. The water judge of each water division may appoint and supervise a water commissioner as provided for in Title 85, chapter 5.

History: **En. Sec. 6, Ch. 697, L. 1979.**

3-7-212. Enforcement of final decree. The water judge of each water division may enforce the provisions of a final decree issued in that water division as provided in 85-2-234.

History: **En. Sec. 6, Ch. 697, L. 1979.**

3-7-213. Designation of alternate judge. The water judge may designate any other district judge within the water division to preside in his absence on his behalf as water judge for the immediate enforcement of an existing decree or the immediate granting of extraordinary relief as may be provided for by law upon an allegation of irreparable harm.

History: **En. Sec. 6, Ch. 697, L. 1979.**

Part 3

Water Masters

3-7-301. Appointment of water masters — removal. (1) The water judge in each water division shall appoint a water master.

(2) A water master may be appointed after July 1, 1980, and must be appointed on or before July 1, 1982.

(3) In appointing a water master, the water judge shall consider a potential master's experience with water law, water use, and water rights.

(4) A water master shall serve at the pleasure of the water judge and may be removed by the water judge.

History: **En. Sec. 3, Ch. 697, L. 1979.**

3-7-302. Salary, expenses, and retirement of water masters. (1) The water judges shall set a uniform salary for water masters. Water masters shall receive expenses as provided in 2-18-501 through 2-18-503.

(2) A water master shall participate in the Montana Public Employees' Retirement System established in Title 19, chapter 3.

(3) The salary and expenses of a water master shall be paid from the water right adjudication account established in 85-2-241.

History: **En. Sec. 4, Ch. 697, L. 1979.**

3-7-303 through 3-7-310 reserved.

3-7-311. Duties of water masters. (1) The water master has the general powers given to a master by M.R.Civ.P., Rule 53(c).

(2) Within a reasonable time after June 30, 1983, the water master shall issue a report to the water judge meeting the requirements for the preliminary decree as specified in 85-2-231.

(3) After a water judge issues a preliminary decree, the water master shall assist the water judge in the performance of the water division's further duties as ordered by the water judge.

History: **En. Sec. 5, Ch. 697, L. 1979.**

Part 4

Disqualification

3-7-401. Definitions. For the purposes of this part, the following definitions apply:

(1) "Proceeding" includes prehearing, hearing, appellate review, or other stages of adjudication conducted by the water master or water judge.

(2) "Fiduciary" includes such relationships as executor, administrator, trustee, or guardian.

(3) "Financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(a) ownership in a mutual or common investment fund that holds securities is not a financial interest in such securities unless the judge or water master participates in the management of the fund;

(b) an office in an educational, religious, charitable, fraternal, or civic organization is not a financial interest in securities held by the organization;

(c) the proprietary interest of a policyholder in a mutual insurance company or a depositor in a mutual savings association or a similar proprietary interest is a financial interest in the organization only if the outcome of the proceeding could substantially affect the value of the interest; and

(d) ownership of government securities is a financial interest in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

History: En. Sec. 7, Ch. 697, L. 1979.

3-7-402. Disqualification of water judge or master. (1) A water judge may disqualify himself or the water master in any proceeding or pertinent portion thereof in which his or the water master's impartiality might reasonably be questioned.

(2) A water judge may also disqualify himself or the water master in the following circumstances:

(a) if he or the water master has a personal bias or prejudice concerning a party of personal knowledge or disputed evidentiary facts concerning the proceeding;

(b) if in private practice he or the water master served as a lawyer in the matter in controversy or a lawyer with whom he or the water master previously practiced law served during such association as a lawyer concerning the matter or the judge or the lawyer has been a material witness concerning it;

(c) if he or the water master has served in governmental employment and in such capacity participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(d) if he or the water master knows that he or the water master individually or as a fiduciary, or his or the water master's spouse or minor child residing in his or the water master's household has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be substantially affected by the outcome of the proceeding; or

(e) if he or the water master or his or the water master's spouse or a person within the third degree of relationship to any of them (as calculated according to 72-11-101 through 72-11-105) or the spouse of such a person:

(i) is a party to the proceeding or an officer, director, or trustee of a party;

(ii) is known by the judge or water master to have an interest that could be substantially affected by the outcome of the proceeding;

(iii) is to the judge's or water master's knowledge likely to be a material witness in the proceeding.

(3) A water judge should inform himself about his and the water master's personal and fiduciary financial interests and make a reasonable effort to inform himself about the personal financial interests of his and the water master's spouse and minor children residing in his or the water master's respective household.

History: **En. Sec. 7, Ch. 697, L. 1979.**

3-7-403. Waiver of disqualification. A water judge may accept from the parties to the proceeding a waiver of any ground for disqualification if it is preceded by a full disclosure on the record of the basis for disqualification.

History: **En. Sec. 7, Ch. 697, L. 1979.**

3-7-404. Procedure exclusive. The procedure for disqualification of a water judge or water master specified in this section is exclusive unless otherwise specifically altered by the Montana supreme court.

History: **En. Sec. 7, Ch. 697, L. 1979.**

Part 5

Jurisdiction

3-7-501. Jurisdiction. (1) The jurisdiction of each judicial district concerning the determination and interpretation of existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.

(2) No water judge may preside over matters concerning the determination and interpretation of existing water rights beyond the boundaries specified in 3-7-102 for his division.

(3) The water judge for each division shall exercise jurisdiction over all matters concerning the determination and interpretation of existing water rights within his division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly within the division.

History: **En. Secs. 1, 6, Ch. 697, L. 1979.**

3-7-502. Jurisdictional disputes. Whenever a question arises concerning which water judge shall preside over adjudication of a matter concerning the determination and interpretation of existing water rights, the question shall be settled by the water judges involved.

History: **En. Sec. 2, Ch. 697, L. 1979.**

CHAPTERS 8 AND 9

RESERVED

CHAPTER 10

JUSTICES' COURTS

Part 1 — General Provisions

Section
3-10-101. Number and location of justices' courts.
3-10-102. When courts open.
3-10-103. County to provide facilities.
Sections 3-10-104 through 3-10-110 reserved.
3-10-111. What provisions of code applicable to justices' courts.

Part 2 — Justices of the Peace

3-10-201. Election.
3-10-202. Oath — qualifications.
3-10-203. Orientation course — annual training.
3-10-204. Residence requirements.
3-10-205. Term of office.
3-10-206. Vacancies.
3-10-207. Salaries.
3-10-208. Office hours.
3-10-209. Expenses.
Sections 3-10-210 through 3-10-220 reserved.
3-10-221. Duties of justices.
3-10-222. Collection and payment of moneys.
Sections 3-10-223 through 3-10-230 reserved.
3-10-231. Circumstances in which an acting justice called in — by whom.
3-10-232. Docket entries by acting justice.
3-10-233. Jurisdiction of acting justice.
3-10-234. Expenses of acting justice.

Part 3 — Jurisdiction of Justices' Courts

3-10-301. Civil jurisdiction.
3-10-302. Jurisdiction over forcible entry, unlawful detainer, and residential landlord-tenant disputes.
3-10-303. Criminal jurisdiction.
3-10-304. Territorial extent of civil jurisdiction.
3-10-305. Territorial jurisdiction for subpoenas and final process.
3-10-306. Papers issued to be complete.

Part 4 — Contempts in Justices' Courts

3-10-401. Contempts a justice may punish for.
3-10-402. Proceedings — contempt committed in presence of court.
3-10-403. Proceedings — contempt not in presence of court.
3-10-404. Punishment.
3-10-405. Conviction in docket.

Part 5 — Records in Justices' Courts

3-10-501. Contents of docket.
3-10-502. How entries made — prima facie evidence.
3-10-503. Index to the docket.

Sections 3-10-504 through 3-10-510 reserved.
3-10-511. Records delivered to successor.
3-10-512. Proceedings when office becomes vacant.
3-10-513. Who is the successor.
3-10-514. Docket of predecessor.

Part 6 — Fees and Costs in Justices' Courts

3-10-601. Collection and disposition of fees — itemized statement.
3-10-602. Penalty.
3-10-603. Costs in criminal actions.

Part 7 — Constables

3-10-701. Constables to attend court.
3-10-702. Governed by law prescribing sheriffs' duties.
3-10-703. Compensation.
3-10-704. Deputy constables.
3-10-705. Authority of deputy.
3-10-706. Execution of process by retiring constable.

Parts 8 and 9 reserved

Part 10 — Small Claims Division

3-10-1001. Purpose.
3-10-1002. Creation.
3-10-1003. Location — hours.
3-10-1004. Jurisdiction — removal from district court.
3-10-1005. Docket entries.

Part 1

General Provisions

3-10-101. Number and location of justices' courts. (1) There must be at least one justice's court in each county of the state. The board of county commissioners of each county of the state shall have authority to constitute one additional justice's court in its respective county, as the board deems necessary.

(2) One justice's court in each county must be located at the county seat, and the board of county commissioners shall determine the location of the other justice's court in its respective county.

History: En. Sec. 60, C. Civ. Proc. 1895; re-en. Sec. 6279, Rev. C. 1907; re-en. Sec. 8833, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 85; re-en. Sec. 8833, R.C.M. 1935; amd. Sec. 4, Ch. 491, L. 1973; amd. Sec. 1, Ch. 23, L. 1974; amd. Sec. 1, Ch. 276, L. 1974; amd. Sec. 9, Ch. 420, L. 1975; R.C.M. 1947, 93-401(part).

3-10-102. When courts open. A justice's court is always open for the transaction of business, except on legal holidays and nonjudicial days.

History: En. Sec. 61, C. Civ. Proc. 1895; re-en. Sec. 6280, Rev. C. 1907; re-en. Sec. 8834, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 104; amd. Sec. 1, Ch. 92, L. 1933; re-en. Sec. 8834, R.C.M. 1935; amd. Sec. 6, Ch. 491, L. 1973; amd. Sec. 3, Ch. 276, L. 1974; R.C.M. 1947, 93-402.

3-10-103. County to provide facilities. The board of county commissioners of the county in which the justice of the peace has been elected or appointed shall provide for the justice of the peace:

(1) the office, courtroom, and clerical assistance necessary to enable him to perform his duties in dignified surroundings;

(2) the books, records, forms, papers, stationery, postage, office equipment, and supplies necessary in the proper keeping of the records and files of the judicial office and the transaction of the business;

(3) the latest edition of the Montana Code Annotated and all official supplements thereto.

History: **En. Sec. 3, Ch. 491, L. 1973; R.C.M. 1947, 93-412(1).**

3-10-104 through 3-10-110 reserved.

3-10-111. What provisions of code applicable to justices' courts. Because justices' courts are courts of peculiar and limited jurisdiction, only those provisions of this code which are, in their nature, applicable to the organization, powers, and course of proceedings in justices' courts or which have been made applicable by special provisions in this chapter, chapter 31 of Title 25, and Title 27 are applicable to justices' courts and the proceedings therein.

History: **En. Sec. 1686, C. Civ. Proc. 1895; re-en. Sec. 7084, Rev. C. 1907; re-en. Sec. 9717, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 925; re-en. Sec. 9717, R.C.M. 1935; amd. Sec. 52, Ch. 344, L. 1977; R.C.M. 1947, 93-7707; amd. Sec. 22, Ch. 21, L. 1979.**

Part 2

Justices of the Peace

3-10-201. Election. (1) Each justice of the peace must be elected by the qualified electors of the county at the general state election next preceding the expiration of the term of office of his predecessor.

(2) A justice of the peace shall be nominated and elected on the nonpartisan judicial ballot in the same manner as are judges of the district court.

(3) Each judicial office shall be a separate and independent office for election purposes, and each office shall be numbered by the county commissioners, and each candidate for justice of the peace shall specify the number of the office for which he seeks to be elected. A candidate may not file for more than one office.

(4) Section 13-35-231, prohibiting political party endorsement for judicial officers, shall also apply to justices of the peace.

History: **En. Sec. 60, C. Civ. Proc. 1895; re-en. Sec. 6279, Rev. C. 1907; re-en. Sec. 8833, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 85; re-en. Sec. 8833, R.C.M. 1935; amd. Sec. 4, Ch. 491, L. 1973; amd. Sec. 1, Ch. 23, L. 1974; amd. Sec. 1, Ch. 276, L. 1974; amd. Sec. 9, Ch. 420, L. 1975; R.C.M. 1947, 93-401(part).**

3-10-202. Oath — qualifications. (1) Each justice of the peace, elected or appointed, after he has received his certificate of election or appointment, shall, before entering upon the duties of his office, take the constitutional oath of office, which must be filed with the county clerk.

(2) Before the county clerk may file the oath, the elected or appointed justice must satisfy the clerk that he is either:

(a) an attorney at law authorized to practice law in the state of Montana;

(b) a person who has held the office of justice of the peace within the preceding 5 years; or

(c) a person who has completed the orientation course of study held under the direction of the university of Montana law school. If a person is appointed after the course is offered, he must agree to take the course at the next offering and failure to do so will disqualify him.

History: En. Sec. 60, C. Civ. Proc. 1895; re-en. Sec. 6279, Rev. C. 1907; re-en. Sec. 8833, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 85; re-en. Sec. 8833, R.C.M. 1935; amd. Sec. 4, Ch. 491, L. 1973; amd. Sec. 1, Ch. 23, L. 1974; amd. Sec. 1, Ch. 276, L. 1974; amd. Sec. 9, Ch. 420, L. 1975; R.C.M. 1947, 93-401(3), (4).

3-10-203. Orientation course — annual training. (1) The university of Montana law school, under the supervision of the supreme court, shall present a course of study as soon as is practical following each general election. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials shall be paid to the elected or appointed justice of the peace for attending the course by the county in which he holds or will hold court and shall be charged against that county.

(2) There shall be two mandatory annual training sessions supervised by the supreme court for all elected and appointed justices of the peace. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials shall be paid to the elected or appointed justice of the peace for attending the sessions by the county in which he holds or will hold court and shall be charged against that county.

(3) Each justice of the peace shall attend the training sessions provided for in subsection (2). Failure to attend disqualifies him from office and creates a vacancy in the office. However, the supreme court may excuse a justice of the peace from attendance because of illness, a death in the family, or any other good cause.

History: En. Sec. 60, C. Civ. Proc. 1895; re-en. Sec. 6279, Rev. C. 1907; re-en. Sec. 8833, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 85; re-en. Sec. 8833, R.C.M. 1935; amd. Sec. 4, Ch. 491, L. 1973; amd. Sec. 1, Ch. 23, L. 1974; amd. Sec. 1, Ch. 276, L. 1974; amd. Sec. 9, Ch. 420, L. 1975; R.C.M. 1947, 93-401(5), (6); amd. Sec. 1, Ch. 466, L. 1979; amd. Sec. 9, Ch. 528, L. 1979.

Compiler's Comments

Transition. Sec. 16, Ch. 528, L. 1979, provided: "A judicial officer, as defined in 1-1-202, who is occupying his judicial office on the effective date of this act shall continue to be paid expenses on the same basis as he is receiving them on the effective date of this act until the expiration of his term of office. All judicial officers who take office or begin a new term of office after the effective date of this act shall receive expenses as provided in this act."

Severability. Sec. 17, Ch. 528, L. 1979, was a severability section.

3-10-204. Residence requirements. (1) Every justice of the peace must reside in the county in which his court is held.

(2) No person is eligible to the office of justice of the peace unless he shall have been a citizen of the United States and a resident of the county in which he is to serve for 1 year next preceding his election or appointment.

History: En. Sec. 163, C. Civ. Proc. 1895; re-en. Sec. 6311, Rev. C. 1907; re-en. Sec. 8865, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 159; re-en. Sec. 8865, R.C.M. 1935; amd. Sec. 13, Ch. 491, L. 1973; R.C.M. 1947, 93-704.

3-10-205. Term of office. The term of office of justices of peace is 4 years from the first Monday in January next succeeding their election.

History: En. Sec. 64, C. Civ. Proc. 1895; re-en. Sec. 6283, Rev. C. 1907; re-en. Sec. 8837, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 110; re-en. Sec. 8837, R.C.M. 1935; amd. Sec. 8, Ch. 491, L. 1973; R.C.M. 1947, 93-405.

3-10-206. Vacancies. If a vacancy occurs in the office of a justice of the peace, the county commissioners of the county must appoint an eligible person to hold the office for the remainder of the unexpired term.

History: En. Sec. 65, C. Civ. Proc. 1895; re-en. Sec. 6284, Rev. C. 1907; re-en. Sec. 8838, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 111; re-en. Sec. 8838, R.C.M. 1935; R.C.M. 1947, 93-406.

3-10-207. Salaries. (1) The board of county commissioners shall set salaries for justices of the peace by resolution. Salaries must meet the minimum requirements established by this section.

(2) If the salary of the justice of the peace was determined on a fee basis for the years 1971 and 1972, he shall receive a monthly salary of not less than one-eighteenth of the total fees, civil and criminal, collected by the justice or his predecessor in office during the 2 years 1971 and 1972.

(3) If the salary of the justice of the peace was determined on a nonfee basis for the years 1971 and 1972, the justice shall be paid not less than the highest salary earned by the justice or his predecessor for the years 1971 and 1972.

(4) The salary of the justice of the peace may not be less than the salary for the district clerk of the court in that county, except as provided for in subsection (5).

(5) In the event his court is not open for business full time, the justice's salary shall be commensurate to the workload and office hours of the court.

History: En. Sec. 1, Ch. 491, L. 1973; R.C.M. 1947, 93-413; amd. Sec. 1, Ch. 536, L. 1979.

3-10-208. Office hours. In the resolution providing for the salary, the county commissioners shall designate the office hours for each justice. Office hours shall be commensurate with the salary provided.

History: En. Sec. 2, Ch. 491, L. 1973; R.C.M. 1947, 93-414.

3-10-209. Expenses. All actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred by the justice of the peace in the performance of his official duties are a legal charge against the county.

History: En. Sec. 3, Ch. 491, L. 1973; R.C.M. 1947, 93-412(2); amd. Sec. 10, Ch. 528, L. 1979.

3-10-210 through 3-10-220 reserved.

3-10-221. Duties of justices. Justices of the peace must perform such duties as are prescribed in this chapter, chapter 31 of Title 25, and Title 27 and any other duties prescribed by law.

History: En. Sec. 4552, Pol. C. 1895; re-en. Sec. 3099, Rev. C. 1907; re-en. Sec. 4862, R.C.M. 1921; Cal. Pol. C. Sec. 4316; re-en. Sec. 4862, R.C.M. 1935; amd. Sec. 12, Ch. 344, L. 1977; R.C.M. 1947, 16-3604; amd. Sec. 23, Ch. 21, L. 1979.

3-10-222. Collection and payment of moneys. Justices of the peace must receive from the sheriff or constable of their county all moneys collected on any process or order issued from their courts respectively and must pay the same and all moneys paid to them in their official capacity over to the parties entitled or authorized to receive them, without delay.

History: En. Sec. 644, p. 171, Bannack Stat.; re-en. Sec. 749, p. 186, Cod. Stat. 1871; re-en. Sec. 809, 1st Div. Rev. Stat. 1879; re-en. Sec. 829, 1st Div. Comp. Stat. 1887; amd. Sec. 1682, C. Civ. Proc. 1895; re-en. Sec. 7080, Rev. C. 1907; re-en. Sec. 9713, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 921; re-en. Sec. 9713, R.C.M. 1935; R.C.M. 1947, 93-7703.

3-10-223 through 3-10-230 reserved.

3-10-231. Circumstances in which an acting justice called in — by whom. (1) Whenever a justice of the peace is disqualified from acting in any action because of the application of the supreme court's rules on disqualification and substitution of judges, subdivision 1, 2, or 3, he shall either transfer the action to another justice's court in the same county or call a justice from a neighboring county to preside in his behalf.

(2) Whenever a justice is sick, disabled, or absent and the county commissioners find that there is a delay in the proper administration of justice or the county attorney makes a written request, another justice, if there is one readily available, or a city judge or some other qualified person shall be called in to hold court for the absent justice until his return.

(3) During the time when a justice of the peace is on vacation or attending a training session, another justice of the peace of the same county shall be authorized to handle matters that otherwise would be handled by the absent justice. When there is no other justice of the peace in the county, the county commissioners shall handle the situation in the same manner as if the justice were sick or absent.

(4) A justice of the peace of any county may hold the court of any other justice of the peace at his request.

History: (1) thru (3)En. Sec. 626, p. 168, Bannack Stat.; re-en. Sec. 732, p. 184, Cod. Stat. 1871; re-en. Sec. 792, 1st Div. Rev. Stat. 1879; re-en. Sec. 812, 1st Div. Comp. Stat. 1887; amd. Sec. 1683, C. Civ. Proc. 1895; re-en. Sec. 7081, Rev. C. 1907; re-en. Sec. 9714, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 922; re-en. Sec. 9714, R.C.M. 1935; amd. Sec. 24, Ch. 491, L. 1973; amd. Sec. 17, Ch. 420, L. 1975; amd. Sec. 51, Ch. 344, L. 1977; Sec. 93-7704, R.C.M. 1947; (4)En. Sec. 62, C. Civ. Proc. 1895; re-en. Sec. 6281, Rev. C. 1907; re-en. Sec. 8835, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 105; amd. Sec. 2, Ch. 92, L. 1933; re-en. Sec. 8835, R.C.M. 1935; amd. Sec. 7, Ch. 491, L. 1973; amd. Sec. 10, Ch. 420, L. 1975; Sec. 93-403, R.C.M. 1947; R.C.M. 1947, 93-403(part), 93-7704(1).

3-10-232. Docket entries by acting justice. When another justice or any other qualified person is called to preside in a justice's court, proper entries of all proceedings must be made in the docket of the justice for whom the visiting justice or person holds court. A justice holding court at the request of another justice must subscribe the entries. When the appointment is made by order of the county commissioners, the order shall be placed in the court docket.

History: En. Sec. 62, C. Civ. Proc. 1895; re-en. Sec. 6281, Rev. C. 1907; re-en. Sec. 8835, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 105; amd. Sec. 2, Ch. 92, L. 1933; re-en. Sec. 8835, R.C.M. 1935; amd. Sec. 7, Ch. 491, L. 1973; amd. Sec. 10, Ch. 420, L. 1975; R.C.M. 1947, 93-7704(3).

3-10-233. Jurisdiction of acting justice. When called in to preside over a justice's court, the visiting justice of the peace or other qualified person while acting as justice of the peace is vested with all the power of the justice for whom he holds court.

History: En. Sec. 62, C. Civ. Proc. 1895; re-en. Sec. 6281, Rev. C. 1907; re-en. Sec. 8835, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 105; amd. Sec. 2, Ch. 92, L. 1933; re-en. Sec. 8835, R.C.M. 1935; amd. Sec. 7, Ch. 491, L. 1973; amd. Sec. 10, Ch. 420, L. 1975; R.C.M. 1947, 93-7704(4).

3-10-234. Expenses of acting justice. Whenever a justice of the peace or another person is called in to preside over the court of a justice under 3-10-231, the visiting justice or other person shall be paid his actual and necessary travel expenses, as defined and provided in 2-18-501 through

2-18-503. If the acting justice is not a justice of the peace receiving a salary, he shall also receive such compensation as is proper for the time involved. The cost of implementing this section is a proper charge against the county where the court is held.

History: Ap. p. Sec. 626, p. 168, Bannack Stat.; re-en. Sec. 732, p. 184, Cod. Stat. 1871; re-en. Sec. 792, 1st Div. Rev. Stat. 1879; re-en. Sec. 812, 1st Div. Comp. Stat. 1887; amd. Sec. 1683, C. Civ. Proc. 1895; re-en. Sec. 7081, Rev. C. 1907; re-en. Sec. 9714, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 922; re-en. Sec. 9714, R.C.M. 1935; amd. Sec. 24, Ch. 491, L. 1973; amd. Sec. 17, Ch. 420, L. 1975; amd. Sec. 51, Ch. 344, L. 1977; Sec. 93-7704, R.C.M. 1947; Ap. p. Sec. 62, C. Civ. Proc. 1895; re-en. Sec. 6281, Rev. C. 1907; re-en. Sec. 8835, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 105; amd. Sec. 2, Ch. 92, L. 1933; re-en. Sec. 8835, R.C.M. 1935; amd. Sec. 7, Ch. 491, L. 1973; amd. Sec. 10, Ch. 420, L. 1975; Sec. 93-403, R.C.M. 1947; R.C.M. 1947, 93-403(part), 93-7704(2); amd. Sec. 11, Ch. 528, L. 1979.

Part 3

Jurisdiction of Justices' Courts

3-10-301. Civil jurisdiction. (1) Except as provided in subsection (2) and in 3-11-103, the justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed $1,500, exclusive of court costs;

(b) in actions for damages not exceeding $1,500, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding $1,500, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed $1,500;

(e) in actions for a fine, penalty, or forfeiture not exceeding $1,500, imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed $1,500, though the penalty may exceed that sum;

(g) to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed $1,500, exclusive of court costs.

(2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money.

History: En. Sec. 546, p. 150, Bannack Stat.; amd. Sec. 655, p. 167, Cod. Stat. 1871; re-en. Sec. 715, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 46, L. 1883; re-en. Sec. 735, 1st Div. Comp. Stat. 1887; amd. Sec. 66, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 76, L. 1907; re-en. Sec. 6286, Rev. C. 1907; re-en. Sec. 8840, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 112; re-en. Sec. 8840, R.C.M. 1935; amd. Sec. 11, Ch. 420, L. 1975; amd. Sec. 26, Ch. 344, L. 1977; R.C.M. 1947, 93-408; amd. Sec. 24, Ch. 21, L. 1979; amd. Sec. 3, Ch. 409, L. 1979.

3-10-302. Jurisdiction over forcible entry, unlawful detainer, and residential landlord-tenant disputes. The justices' courts have concurrent jurisdiction with the district courts within their respective counties in actions of forcible entry and unlawful detainer and in actions brought under Title 70, chapter 24.

History: En. Sec. 67, C. Civ. Proc. 1895; re-en. Sec. 6287, Rev. C. 1907; re-en. Sec. 8841, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 113; re-en. Sec. 8841, R.C.M. 1935; amd. Sec. 12, Ch. 420, L. 1975; R.C.M. 1947, 93-409; amd. Sec. 1, Ch. 417, L. 1979.

3-10-303. Criminal jurisdiction. The justices' courts have jurisdiction of public offenses committed within the respective counties in which such courts are established as follows:

(1) jurisdiction of all misdemeanors punishable by a fine not exceeding $500 or imprisonment not exceeding 6 months or both such fine and imprisonment, excluding jurisdiction in cases commenced under Title 45, chapter 9, except to act as examining and committing courts and to conduct preliminary hearings as provided in subsection (4);

(2) jurisdiction of all violations of fish and game statutes punishable by a fine of not more than $1,000 or imprisonment for not more than 6 months, or both;

(3) concurrent jurisdiction with district courts of all misdemeanors punishable by a fine only not exceeding $1,500; and

(4) jurisdiction to act as examining and committing courts and for such purpose to conduct preliminary hearings.

History: Ap. p. Sec. 1, Ch. 196, L. 1967; amd. Sec. 11, Ch. 314, L. 1969; amd. Sec. 6, Ch. 465, L. 1977; Sec. 95-302, R.C.M. 1947; Ap. p. Sec. 68, C. Civ. Proc. 1895; re-en. Sec. 6288, Rev. C. 1907; re-en. Sec. 8842, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 115; re-en. Sec. 8842, R.C.M. 1935; amd. Sec. 13, Ch. 420, L. 1975; Sec. 93-410, R.C.M. 1947; R.C.M. 1947, 93-410, 95-302.

3-10-304. Territorial extent of civil jurisdiction. The civil jurisdiction of a justice's court extends to the limits of the county in which it is held, and mesne and final process of a justice's court in a county may be issued to and served in any part of the county. A summons of a justice's court may be served as provided in 25-31-407.

History: En. Sec. 550, p. 151, Bannack Stat.; re-en. Sec. 656, p. 167, Cod. Stat. 1871; re-en. Sec. 716, 1st Div. Rev. Stat. 1879; re-en. Sec. 736, 1st Div. Comp. Stat. 1887; amd. Sec. 63, C. Civ. Proc. 1895; re-en. Sec. 6282, Rev. C. 1907; re-en. Sec. 8836, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 106; re-en. Sec. 8836, R.C.M. 1935; R.C.M. 1947, 93-404; amd. Sec. 25, Ch. 21, L. 1979.

3-10-305. Territorial jurisdiction for subpoenas and final process. Justices of the peace may issue subpoenas in any action or proceeding in the courts held by them and final process on any judgment recovered therein to any part of the county.

History: En. Sec. 632, p. 168, Bannack Stat.; re-en. Sec. 738, p. 185, Cod. Stat. 1871; re-en. Sec. 798, 1st Div. Rev. Stat. 1879; re-en. Sec. 818, 1st Div. Comp. Stat. 1887; re-en. Sec. 1680, C. Civ. Proc. 1895; re-en. Sec. 7078, Rev. C. 1907; re-en. Sec. 9711, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 919; re-en. Sec. 9711, R.C.M. 1935; R.C.M. 1947, 93-7701.

3-10-306. Papers issued to be complete. The summons, execution, and other papers made or issued by a justice, except a subpoena, must be issued without a blank left to be filled by another; otherwise they are void.

History: En. Sec. 625, p. 167, Bannack Stat.; re-en. Sec. 731, p. 184, Cod. Stat. 1871; re-en. Sec. 791, 1st Div. Rev. Stat. 1879; re-en. Sec. 811, 1st Div. Comp. Stat. 1887; re-en. Sec. 1681, C. Civ. Proc. 1895; re-en. Sec. 7079, Rev. C. 1907; re-en. Sec. 9712, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 920; re-en. Sec. 9712, R.C.M. 1935; R.C.M. 1947, 93-7702.

Part 4

Contempts in Justices' Courts

3-10-401. Contempts a justice may punish for. A justice may punish for contempt persons guilty of the following acts and no other:

(1) disorderly, contemptuous, or insolent behavior toward the justice while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(2) a breach of the peace, boisterous conduct, or violent disturbance in the presence of the justice or in the immediate vicinity of the court held by him tending to interrupt the due course of a trial or other judicial proceeding;

(3) disobedience or resistance to the execution of a lawful order or process made or issued by the justice;

(4) disobedience to a subpoena duly served or refusal to be sworn or to answer as a witness;

(5) rescuing any person or property in the custody of an officer by virtue of an order or process of the court.

History: En. Sec. 1650, C. Civ. Proc. 1895; re-en. Sec. 7065, Rev. C. 1907; re-en. Sec. 9698, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 906; re-en. Sec. 9698, R.C.M. 1935; amd. Sec. 47, Ch. 344, L. 1977; R.C.M. 1947, 93-7501.

3-10-402. Proceedings — contempt committed in presence of court. When a contempt is committed in the immediate view and presence of the justice, it may be punished summarily. To that end, an order must be made reciting the facts as they occurred and adjudging that the person proceeded against is thereby guilty of contempt and that he be punished as therein prescribed.

History: En. Sec. 1651, C. Civ. Proc. 1895; re-en. Sec. 7066, Rev. C. 1907; re-en. Sec. 9699, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 907; re-en. Sec. 9699, R.C.M. 1935; R.C.M. 1947, 93-7502.

3-10-403. Proceedings — contempt not in presence of court. When the contempt is not committed in the immediate view and presence of the justice, a warrant of arrest may be issued by such justice on which the person so guilty may be arrested and brought before the justice immediately, when an opportunity to be heard in his defense or excuse must be given. The justice may thereupon discharge him or may convict him of the offense.

History: En. Sec. 1652, C. Civ. Proc. 1895; re-en. Sec. 7067, Rev. C. 1907; re-en. Sec. 9700, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 908; re-en. Sec. 9700, R.C.M. 1935; R.C.M. 1947, 93-7503.

3-10-404. Punishment. A justice may punish for contempts by fine or imprisonment, or both; such fine not to exceed, in any one case, $100 and such imprisonment, 1 day.

History: En. Sec. 630, p. 168, Bannack Stat.; re-en. Sec. 736, p. 184, Cod. Stat. 1871; re-en. Sec. 796, 1st Div. Rev. Stat. 1879; re-en. Sec. 816, 1st Div. Comp. Stat. 1887; amd. Sec. 1653, C. Civ. Proc. 1895; re-en. Sec. 7068, Rev. C. 1907; re-en. Sec. 9701, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 909; re-en. Sec. 9701, R.C.M. 1935; R.C.M. 1947, 93-7504.

3-10-405. Conviction in docket. The conviction, specifying particularly the offense and the judgment thereon, must be entered by the justice in his docket.

History: En. Sec. 631, p. 168, Bannack Stat.; re-en. Sec. 737, p. 184, Cod. Stat. 1871; re-en. Sec. 797, 1st Div. Rev. Stat. 1879; re-en. Sec. 817, 1st Div. Comp. Stat. 1887; amd. Sec. 1654, C. Civ. Proc.

1895; re-en. Sec. 7069, Rev. C. 1907; re-en. Sec. 9702, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 910; re-en. Sec. 9702, R.C.M. 1935; R.C.M. 1947, 93-7505.

Part 5

Records in Justices' Courts

3-10-501. Contents of docket. Every justice must keep a book, denominated a "docket", in which he must enter:

(1) the title of every action or proceeding;

(2) the object of the action or proceeding and, if a sum of money be claimed, the amount thereof;

(3) the date of the summons and the time of its return and, if an order to arrest the defendant be made or a writ of attachment be issued, a statement of the fact;

(4) the time when the parties or either of them appear or their nonappearance if default be made; a minute of the pleading and motions, if in writing, referring to them, if not in writing, a concise statement of the material parts of the pleadings;

(5) every adjournment, stating on whose application and to what time;

(6) the demand for a trial by jury, when the same is made, and by whom made; the order for the jury; and the time appointed for the return of the jury and for the trial;

(7) the names of the jurors who appear and are sworn and the names of all witnesses sworn and at whose request;

(8) the verdict of the jury and when received; if the jury disagree and are discharged, the fact of such disagreement and discharge;

(9) the judgment of the court, specifying the costs included and the time when rendered, and an itemized statement of the costs;

(10) the issuing of the execution, when issued, and to whom; the renewals thereof, if any, and when made; and a statement of any money paid to the justice, when, and by whom;

(11) the receipt of a notice of appeal, if any be given, and of the undertaking on appeal, if any be filed.

History: Secs. 9703-9709, R.C.M. 1921, were en. Secs. 619-624, pp. 166, 167, Bannack Stat.; re-en. Secs. 725-730, pp. 183, 184, Cod. Stat. 1871; re-en. Secs. 785-790, 1st Div. Rev. Stat. 1879; re-en. Secs. 805-810, 1st Div. Comp. Stat. 1887; amd. Secs. 1660-1667, C. Civ. Proc. 1895.

This section re-en. Sec. 7070, Rev. C. 1907; re-en. Sec. 9703, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 911; re-en. Sec. 9703, R.C.M. 1935; R.C.M. 1947, 93-7601.

3-10-502. How entries made — prima facie evidence. (1) The items listed in 3-10-501 must be entered in the docket under the title of the action to which they relate and, unless otherwise provided, at the time when they occur.

(2) Such entries in a justice's docket or a transcript thereof certified by the justice or his successor in office are prima facie evidence of the facts so stated.

History: En. Sec. 1661, C. Civ. Proc. 1895; re-en. Sec. 7071, Rev. C. 1907; re-en. Sec. 9704, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 912; re-en. Sec. 9704, R.C.M. 1935; amd. Sec. 48, Ch. 344, L. 1977; R.C.M. 1947, 93-7602; amd. Sec. 26, Ch. 21, L. 1979.

3-10-503. Index to the docket. A justice must keep an alphabetical index to his docket, in which must be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs and defendants must be entered in the index in the alphabetical order of the first letter of the family name.

History: En. Sec. 1662, C. Civ. Proc. 1895; re-en. Sec. 7072, Rev. C. 1907; re-en. Sec. 9705, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 913; re-en. Sec. 9705, R.C.M. 1935; R.C.M. 1947, 93-7603.

3-10-504 through 3-10-510 reserved.

3-10-511. Records delivered to successor. Every justice of the peace, upon the expiration of his term of office, must deposit with his successor his official dockets and all papers filed in his office, his own as well as those of his predecessors or any other which may be in his custody, to be kept as public records.

History: En. Sec. 1663, C. Civ. Proc. 1895; re-en. Sec. 7073, Rev. C. 1907; re-en. Sec. 9706, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 914; re-en. Sec. 9706, R.C.M. 1935; R.C.M. 1947, 93-7604.

3-10-512. Proceedings when office becomes vacant. If the office of a justice becomes vacant because of his death or his removal from the county or for any other cause before his successor is appointed, the docket and papers that were in his possession shall be deposited in the office of some other justice in the county, who shall deliver them to the successor of the former justice. If there is no other justice in the county, the docket and papers shall be deposited in the office of the county clerk, who shall deliver them to the successor in office of the former justice.

History: En. Sec. 1664, C. Civ. Proc. 1895; re-en. Sec. 7074, Rev. C. 1907; re-en. Sec. 9707, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 915; re-en. Sec. 9707, R.C.M. 1935; amd. Sec. 22, Ch. 491, L. 1973; amd. Sec. 49, Ch. 344, L. 1977; R.C.M. 1947, 93-7605.

3-10-513. Who is the successor. The justice appointed to fill a vacancy is the successor of the justice whose office became vacant before the expiration of a full term. When a full term expires, the person elected to take the numbered office, as provided in 3-10-201, from that time is the successor.

History: En. Sec. 1666, C. Civ. Proc. 1895; re-en. Sec. 7076, Rev. C. 1907; re-en. Sec. 9709, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 917; re-en. Sec. 9709, R.C.M. 1935; amd. Sec. 23, Ch. 491, L. 1973; amd. Sec. 50, Ch. 344, L. 1977; R.C.M. 1947, 93-7607.

3-10-514. Docket of predecessor. Any justice with whom the docket of his predecessor or of any other justice is deposited has and may exercise over all actions and proceedings entered in such docket the same jurisdiction as if originally commenced before him. In the case of the creation of a new county or the change of the boundary between two counties, any justice into whose hands the docket of a justice formerly acting as such within the same territory may come is, for the purpose of this section, considered the successor of such former justice.

History: En. Sec. 1665, C. Civ. Proc. 1895; re-en. Sec. 7075, Rev. C. 1907; re-en. Sec. 9708, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 916; re-en. Sec. 9708, R.C.M. 1935; R.C.M. 1947, 93-7606.

Part 6

Fees and Costs in Justices' Courts

3-10-601. Collection and disposition of fees — itemized statement. (1) Each justice of the peace shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county wherein he holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) He shall also file an itemized statement showing all fees received during the preceding month in his court. The statement shall state that all fees required by law to be paid during the preceding month in connection with matters pending before the court have been paid into the county treasury and listed in the itemized statement and that he has not received or been promised, nor has any one else received or been promised for him, any other moneys, emolument, or thing by virtue of or in connection with his office. The statement shall be subscribed and sworn to by the justice.

History: **En. Sec. 2, Ch. 84, L. 1917; re-en. Sec. 4930, R.C.M. 1921; re-en. Sec. 4930, R.C.M. 1935; amd. Sec. 9, Ch. 491, L. 1973; amd. Sec. 4, Ch. 420, L. 1975; amd. Sec. 15, Ch. 344, L. 1977; R.C.M. 1947, 25-307.**

3-10-602. Penalty. Any justice of the peace violating 3-10-601 shall be deemed guilty of a misdemeanor, punishable by a fine not exceeding $1,000 or imprisonment not exceeding 6 months in the county jail, or both. He shall also be deemed guilty of malfeasance in office and, in the discretion of the court, may be removed from office, in which latter case he shall thereafter be disqualified from holding such office.

History: **En. Sec. 3, Ch. 84, L. 1917; re-en. Sec. 4931, R.C.M. 1921; re-en. Sec. 4931, R.C.M. 1935; R.C.M. 1947, 25-308.**

3-10-603. Costs in criminal actions. (1) The following court costs shall be withheld by justices of the peace from accumulated fines and forfeitures in applicable criminal actions:

(a) for each action filed, $7.50;

(b) for each preliminary hearing held, an additional $7.50;

(c) where there is a trial, an additional $7.50.

(2) The costs listed in subsection (1) shall be withheld regardless of the court's finding or the sentence imposed.

(3) Justices of the peace shall remit to the county treasurer the fees as set forth in subsection (1).

History: **(1), (2)En. 25-310 by Sec. 1, Ch. 289, L. 1973; amd. Sec. 5, Ch. 420, L. 1975; amd. Sec. 1, Ch. 207, L. 1977; Sec. 25-310, R.C.M. 1947; (3)En. 25-311 by Sec. 1, Ch. 287, L. 1973; amd. Sec. 1, Ch. 114, L. 1975; amd. Sec. 6, Ch. 420, L. 1975; Sec. 25-311, R.C.M. 1947; R.C.M. 1947, 25-310, 25-311.**

Part 7

Constables

3-10-701. Constables to attend court. Constables must attend the courts of justices of the peace within their counties whenever so required and execute, serve, and return all process and notices directed or delivered to them by a justice of the peace or by any competent authority of such county.

History: **En. Sec. 4550, Pol. C. 1895; re-en. Sec. 3096, Rev. C. 1907; re-en. Sec. 4859, R.C.M. 1921; Cal. Pol. C. Sec. 4314; re-en. Sec. 4859, R.C.M. 1935; amd. Sec. 4, Ch. 253, L. 1975; R.C.M. 1947, 16-3601.**

3-10-702. Governed by law prescribing sheriffs' duties. All the provisions of 3-5-407, 7-32-2101, 7-32-2102, 7-32-2121, except subsections (4), (5), and (6), 7-32-2122, 7-32-2124, 7-32-2127, 7-32-2129 through 7-32-2132, 25-3-101, 25-3-202, 25-3-204 through 25-3-206, 25-3-301, 25-3-302, 25-13-403, 25-31-408(3), 27-18-305, and 27-18-1505 apply to constables and govern their powers, duties, and liabilities.

History: En. Sec. 4551, Pol. C. 1895; re-en. Sec. 3098, Rev. C. 1907; re-en. Sec. 4861, R.C.M. 1921; Cal. Pol. C. Sec. 4315; re-en. Sec. 4861, R.C.M. 1935; amd. Sec. 11, Ch. 344, L. 1977; R.C.M. 1947, 16-3603.

3-10-703. Compensation. The board of county commissioners shall, by resolution, on or before July 1 of each year, fix the salary of constables for the following fiscal year. Constables shall receive mileage, at the rate provided by law, when performing their official duties.

History: En. 25-312 by Sec. 9, Ch. 253, L. 1975; R.C.M. 1947, 25-312.

3-10-704. Deputy constables. If in any county there is no appointed constable, the board of county commissioners may, at the request of a party, after being satisfied that it is expedient to do so, specially deputize any proper person of suitable age not interested in the action to serve a summons, with or without an order to arrest the defendant and with or without a writ of attachment, or to serve an execution. The county commissioners are liable upon their official bonds for all official acts of the person so deputized. The appointment of the deputy shall be made in writing on the process, and a note thereof shall be made on the justice's docket.

History: En. Sec. 627, p. 168, Bannack Stat.; re-en. Sec. 733, p. 184, Cod. Stat. 1871; re-en. Sec. 793, p. 187, 1st Div. Rev. Stat. 1879; re-en. Sec. 813, 1st Div. Comp. Stat. 1887; amd. Sec. 1688, C. Civ. Proc. 1895; amd. Sec. 1, p. 138, L. 1899; re-en. Sec. 7086, Rev. C. 1907; re-en. Sec. 9719, R.C.M. 1921; re-en. Sec. 9719, R.C.M. 1935; amd. Sec. 25, Ch. 491, L. 1973; amd. Sec. 8, Ch. 253, L. 1975; amd. Sec. 53, Ch. 344, L. 1977; R.C.M. 1947, 93-7709.

3-10-705. Authority of deputy. The person so deputed shall have the authority of a constable in relation to the service, execution, and return of such process and shall be subject to the same obligations.

History: En. Sec. 628, p. 168, Bannack Stat.; re-en. Sec. 734, p. 184, Cod. Stat. 1871; re-en. Sec. 794, 1st Div. Rev. Stat. 1879; re-en. Sec. 814, 1st Div. Comp. Stat. 1887; re-en. Sec. 1689, C. Civ. Proc. 1895; re-en. Sec. 7087, Rev. C. 1907; re-en. Sec. 9720, R.C.M. 1921; re-en. Sec. 9720, R.C.M. 1935; R.C.M. 1947, 93-7710.

3-10-706. Execution of process by retiring constable. A constable, notwithstanding the expiration of his term of office, may proceed and complete the execution of all final process which he has begun to execute, in the same manner as if he were still in office, and his sureties shall be liable to the same extent.

History: En. Sec. 629, p. 168, Bannack Stat.; re-en. Sec. 735, p. 184, Cod. Stat. 1871; re-en. Sec. 795, 1st Div. Rev. Stat. 1879; re-en. Sec. 815, 1st Div. Comp. Stat. 1887; re-en. Sec. 1690, C. Civ. Proc. 1895; re-en. Sec. 7088, Rev. C. 1907; re-en. Sec. 9721, R.C.M. 1921; re-en. Sec. 9721, R.C.M. 1935; R.C.M. 1947, 93-7711.

Parts 8 and 9 reserved

Part 10

Small Claims Division

3-10-1001. Purpose. It is the purpose of this part and chapter 35 of Title 25 to provide a speedy remedy for small claims and to promote a forum in which such claims may be heard and disposed of without the necessity of a formal trial.

History: **En. 93-345 by Sec. 1, Ch. 572, L. 1977; R.C.M. 1947, 93-345.**

3-10-1002. Creation. There is established within the jurisdiction of each justice's court in this state a small claims division to be known as the "small claims court".

History: **En. 93-346 by Sec. 2, Ch. 572, L. 1977; R.C.M. 1947, 93-346.**

3-10-1003. Location — hours. The small claims division of justice's court shall be located at the same place as the justice's court and shall be open during the same hours as the justice's court.

History: **En. 93-360 by Sec. 16, Ch. 572, L. 1977; R.C.M. 1947, 93-360.**

3-10-1004. Jurisdiction — removal from district court. (1) The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed $750, exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed $500. The small claims court shall hear any action so removed from the district court.

History: **En. 93-347 by Sec. 3, Ch. 572, L. 1977; R.C.M. 1947, 93-347.**

3-10-1005. Docket entries. The justice shall enter in the docket kept by him for small claims cases the following:

(1) the title of each action;

(2) the amount claimed;

(3) the date the order of court/notice to defendant was signed and the date of the trial as stated in the order;

(4) the date the parties appeared or the date on which default was entered;

(5) each adjournment, stating on whose application and to what time;

(6) the judgment of the court;

(7) a statement of any money paid to the justice, when, and by whom;

(8) the date of the issuance of any abstract of the judgment; and

(9) the date of the receipt of the notice of appeal, if any is given, and of the appeal bond, if any is filed.

History: **En. 93-361 by Sec. 17, Ch. 572, L. 1977; R.C.M. 1947, 93-361(2).**

CHAPTER 11

CITY COURTS

Part 1 — Creation and Jurisdiction

Section
3-11-101. City court established.
3-11-102. Concurrent jurisdiction.
3-11-103. Exclusive jurisdiction.
3-11-104. Exceptions to civil jurisdiction.

Part 2 — City Judges

3-11-201. Term of office.
3-11-202. Salary.
3-11-203. When substitute for judge called in.
3-11-204. Training sessions for judges.
3-11-205. Justice of the peace acting as city judge.
3-11-206. City to provide facilities.

Part 3 — Procedure in City Courts

3-11-301. City attorney to prosecute.
3-11-302. Who named as plaintiff.
3-11-303. Contempts a city judge may punish for.

Part 1

Creation and Jurisdiction

3-11-101. City court established. (1) A city court is established in each city or town. On judicial days, the court shall be open for all business, civil and criminal. On nonjudicial days, as defined in 3-1-302, the court may transact criminal business only.

(2) Police court is hereby renamed city court, and all references to police court or police judges in the Montana Code Annotated shall be considered amended to read city court or city judge.

History: (1)En. Sec. 4910, Pol. C. 1895; re-en. Sec. 3296, Rev. C. 1907; re-en. Sec. 5087, R.C.M. 1921; re-en. Sec. 5087, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1975; amd. Sec. 2, Ch. 344, L. 1977; Sec. 11-1601, R.C.M. 1947; (2)En. Sec. 80, C. Civ. Proc. 1895; re-en. Sec. 6289, Rev. C. 1907; re-en. Sec. 8843, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 121; re-en. Sec. 8843, R.C.M. 1935; amd. Sec. 3, Ch. 165, L. 1975; Sec. 93-411, R.C.M. 1947; R.C.M. 1947, 11-1601, 93-411(1).

3-11-102. Concurrent jurisdiction. (1) The city court has concurrent jurisdiction with the justice's court of all misdemeanors punishable by a fine not exceeding $500 or by imprisonment not exceeding 6 months or by both fine and imprisonment.

(2) Applications for search warrants and complaints charging the commission of a felony may be filed in the city court. When they are filed, the city judge has the same jurisdiction and responsibility as a justice of the peace, including the holding of a preliminary hearing. The city attorney may file an application for a search warrant or a complaint charging the commission of a felony when the offense was committed within the city limits. The county attorney, however, must handle any action after a defendant is bound over to district court.

History: En. Sec. 4911, Pol. C. 1895; amd. Sec. 1, Ch. 16, L. 1903; re-en. Sec. 3297, Rev. C. 1907; re-en. Sec. 5088, R.C.M. 1921; Cal. Pol. C. Sec. 4426; re-en. Sec. 5088, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1967; amd. Sec. 10, Ch. 240, L. 1971; amd. Sec. 11, Ch. 94, L. 1973; amd. Sec. 4, Ch. 274, L. 1974; amd. Sec. 2, Ch. 165, L. 1975; amd. Sec. 4, Ch. 344, L. 1977; R.C.M. 1947, 11-1602.

3-11-103. Exclusive jurisdiction. Except as provided in 3-11-104, the city court has exclusive jurisdiction of:

(1) proceedings for the violation of an ordinance of the city or town, both civil and criminal;

(2) when the amount of the taxes or assessments sought does not exceed $300, actions for the collection of taxes or assessments levied for any of the following purposes, except that no lien on the property taxed or assessed for the nonpayment of the taxes or assessments may be foreclosed in any such action:

(a) city or town purposes;

(b) the erection or improvement of public buildings;

(c) the laying out, opening, or improving of a public street, sidewalk, alley, or bridge;

(d) the acquisition or improvement of any public grounds; and

(e) public improvements made or ordered by the city or town within its limits;

(3) actions for the collection of money due to the city or town or from the city or town to any person when the amount sought, exclusive of interest and costs, does not exceed $300;

(4) when the amount claimed, exclusive of costs, does not exceed $300, actions for:

(a) the breach of an official bond given by a city or town officer;

(b) the breach of any contract when the city or town is a party or is in any way interested;

(c) damages when the city or town is a party or is in any way interested;

(d) the enforcement of forfeited recognizances given to, for the benefit of, or on behalf of the city or town; and

(e) collection on bonds given upon an appeal taken from the judgment of the court in any action mentioned in subsections (4)(a) through (4)(d);

(5) actions for the recovery of personal property belonging to the city or town when the value of the property, exclusive of the damages for the taking or detention, does not exceed $300; and

(6) actions for the collection of a license fee required by an ordinance of the city or town.

History: En. Sec. 4912, Pol. C. 1895; re-en. Sec. 3298, Rev. C. 1907; re-en. Sec. 5089, R.C.M. 1921; Cal. Pol. C. Sec. 4427; re-en. Sec. 5089, R.C.M. 1935; amd. Sec. 5, Ch. 344, L. 1977; R.C.M. 1947, 11-1603; amd. Sec. 27, Ch. 21, L. 1979; amd. Sec. 6, Ch. 409, L. 1979.

3-11-104. Exceptions to civil jurisdiction. City courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money.

History: En. Sec. 7, Ch. 409, L. 1979.

Compiler's Comments

Codification. Sec. 10, Ch. 409, L. 1979, provided: "Section 7 is intended to be codified as an integral part of Title 3, chapter 11, part 1."

Part 2

City Judges

3-11-201. Term of office. In cities of the first, second, and third class, the city judge shall hold office for a term of 4 years and until the qualification of his successor.

History: (1)En. 11-1601.1 by Sec. 3, Ch. 344, L. 1977; Sec. 11-1601.1, R.C.M. 1947; (2)En. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907; re-en. Sec. 5003,

R.C.M. 1921; amd. Sec. 1, Ch. 60, L. 1935; re-en. Sec. 5003, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971; Sec. 11-709, R.C.M. 1947; R.C.M. 1947, 11-709(part), 11-1601.1; amd. Sec. 377, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

3-11-202. Salary. The annual salary and compensation of city judges must be fixed by ordinance. Each city judge shall receive his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties.

History: En. Sec. 4765, Pol. C. 1895; re-en. Sec. 3241, Rev. C. 1907; amd. Sec. 1, Ch. 61, L. 1919; re-en. Sec. 5020, R.C.M. 1921; re-en. Sec. 5020, R.C.M. 1935; amd. Sec. 2, Ch. 76, L. 1953; amd. Sec. 2, Ch. 179, L. 1961; amd. Sec. 2, Ch. 158, L. 1965; amd. Sec. 1, Ch. 186, L. 1967; R.C.M. 1947, 11-726; amd. Sec. 12, Ch. 528, L. 1979.

Compiler's Comments

Transition. Sec. 16, Ch. 528, L. 1979, provided: "A judicial officer, as defined in 1-1-202, who is occupying his judicial office on the effective date of this act shall continue to be paid expenses on the same basis as he is receiving them on the effective date of this act until the expiration of his term of office. All judicial officers who take office or begin a new term of office after the effective date of this act shall receive expenses as provided in this act."

Severability. Sec. 17, Ch. 528, L. 1979, was a severability section.

3-11-203. When substitute for judge called in. (1) The city judge or mayor may call in a justice of the peace or some qualified resident of the city or town to act in the judge's place whenever the judge is:

(a) a party in a case;

(b) interested in a case;

(c) the spouse of or related to either party in a case by consanguinity or affinity within the sixth degree; or

(d) sick, absent, or unable to act.

(2) The city judge may call in a justice of the peace or some qualified resident of the city or town to act in his stead when a disqualifying affidavit is filed against him pursuant to the supreme court's rules on disqualification and substitution of judges.

History: En. Sec. 4913, Pol. C. 1895; re-en. Sec. 3299, Rev. C. 1907; re-en. Sec. 5090, R.C.M. 1921; Cal. Pol. C. Sec. 4428; re-en. Sec. 5090, R.C.M. 1935; amd. Sec. 2, Ch. 420, L. 1975; amd. Sec. 7, Ch. 344, L. 1977; R.C.M. 1947, 11-1604; amd. Sec. 28, Ch. 21, L. 1979.

3-11-204. Training sessions for judges. (1) There shall be two mandatory annual training sessions supervised by the supreme court for all elected and appointed city judges. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials shall be paid to the elected or appointed judge for attending the sessions. Whenever the office of city judge is held by a justice of the peace, the costs imposed by this subsection are the joint responsibility of the county and the municipality, with the costs to be allocated and charged in proportion to the work done for each governmental entity. In all other cases, the costs shall be paid by the city or town in which he holds or will hold court and shall be charged against that city or town.

(2) Each city judge shall attend the training sessions. Failure to attend disqualifies him from office and creates a vacancy in the office. However, the supreme court may excuse a city judge from attendance because of illness, a death in the family, or any other good cause.

History: En. Sec. 80, C. Civ. Proc. 1895; re-en. Sec. 6289, Rev. C. 1907; re-en. Sec. 8843, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 121; re-en. Sec. 8843, R.C.M. 1935; amd. Sec. 3, Ch. 165, L. 1975; R.C.M. 1947, 93-411(2); amd. Sec. 2, Ch. 466, L. 1979; amd. Sec. 13, Ch. 528, L. 1979.

3-11-205. Justice of the peace acting as city judge. In a town, the council may designate a justice of the peace of the county in which the town is situated to act as city judge and may by ordinance fix the compensation for his services. The justice of the peace so designated may act as city judge in all cases arising out of violations of ordinances in which the town is a party. If the justice of the peace must travel from his place of residence to hold court, he shall be paid his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, by the town in which the court is held.

History: En. Sec. 4766, Pol. C. 1895; re-en. Sec. 3242, Rev. C. 1907; re-en. Sec. 5021, R.C.M. 1921; re-en. Sec. 5021, R.C.M. 1935; amd. Sec. 5, Ch. 491, L. 1973; amd. Sec. 1, Ch. 420, L. 1975; R.C.M. 1947, 11-727; amd. Sec. 29, Ch. 21, L. 1979; amd. Sec. 14, Ch. 528, L. 1979.

3-11-206. City to provide facilities. The governing body of the city in which the judge has been elected or appointed shall provide for the judge:

(1) the office space, courtroom, and clerical assistance necessary to enable him to perform his duties in dignified surroundings;

(2) the books, records, forms, papers, stationery, postage, office equipment, and supplies necessary for the proper keeping of the records and files of the judicial office and the transaction of business;

(3) one copy of the latest edition of the Montana Code Annotated and all official supplements thereto or immediate access to the code and supplements.

History: En. Sec. 4, Ch. 466, L. 1979.

Compiler's Comments

Codification. Sec. 11, Ch. 466, L. 1979, provided: "Sections 3 and 4 are intended to be codified as an integral part of Title 3, chapter 11, and the provisions contained in Title 3, chapter 11, apply to sections 3 and 4."

Part 3

Procedure in City Courts

3-11-301. City attorney to prosecute. The city attorney must prosecute all cases for the violation of any ordinance and prosecute, conduct, and control all proceedings in cases mentioned in 3-11-103, both in the city court and on appeal therefrom to the district court.

History: En. Sec. 4917, Pol. C. 1895; re-en. Sec. 3303, Rev. C. 1907; re-en. Sec. 5094, R.C.M. 1921; re-en. Sec. 5094, R.C.M. 1935; R.C.M. 1947, 11-1608.

3-11-302. Who named as plaintiff. (1) An action brought for violation of a city or town ordinance shall be brought in the name of the city or town as the plaintiff and against the accused as the defendant.

(2) An action brought for violation of a state law within the city or town shall be brought in the name of the state of Montana as the plaintiff and against the accused as the defendant.

History: **En. 11-1603.1 by Sec. 6, Ch. 344, L. 1977; R.C.M. 1947, 11-1603.1.**

3-11-303. Contempts a city judge may punish for. A city judge may punish for contempt persons guilty of the following acts and no other:

(1) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(2) a breach of the peace, boisterous conduct, or violent disturbance in the presence of the judge or in the immediate vicinity of the court held by him tending to interrupt the due course of a trial or other judicial proceeding;

(3) disobedience or resistance to the execution of a lawful order or process made or issued by the judge;

(4) disobedience to a subpoena duly served or refusal to be sworn or to answer as a witness;

(5) rescuing any person or property in the custody of an officer by virtue of an order or process of the court.

History: **En. Sec. 3, Ch. 466, L. 1979.**

Compiler's Comments

Codification. Sec. 11, Ch. 466, L. 1979, provided: "Sections 3 and 4 are intended to be codified as an integral part of Title 3, chapter 11, and the provisions contained in Title 3, chapter 11, apply to sections 3 and 4."

CHAPTER 12

SMALL CLAIMS COURTS

Part 1 — General Provisions

Section
3-12-101. Purpose — liberal construction.
3-12-102. Small claims court authorized.
3-12-103. Creation of court.
3-12-104. Duration of court.
3-12-105. Location — hours.
3-12-106. Jurisdiction — removal from district court.

Part 2 — Small Claims Court Judge

3-12-201. Appointment — salary and expenses — qualifications.
3-12-202. Assistance to claimants.
3-12-203. Judge in multicounty district.

Part 1

General Provisions

3-12-101. Purpose — liberal construction. It is the purpose of this chapter and chapter 34 of Title 25 to provide a speedy remedy in claims falling hereunder and to promote a forum in which such claims may be heard and disposed of without the necessity of formal trial. For this reason, the provisions hereof should be liberally construed to provide an informal but equitable means of justice, and the judges appointed hereunder are required to assist all parties before them to obtain substantial justice.

History: **En. 93-328 by Sec. 7, Ch. 519, L. 1975; R.C.M. 1947, 93-328.**

3-12-102. Small claims court authorized. There may be created within the jurisdiction of the district court of any county of the state of Montana a separate court, known as the "small claims court".

History: **En. 93-322 by Sec. 1, Ch. 519, L. 1975; R.C.M. 1947, 93-322.**

3-12-103. Creation of court. (1) A small claims court may be created by a resolution passed by the board of county commissioners after consultation with the district court judges of the judicial district in which the county is located or by county initiative as provided in Title 7, chapter 5, part 1.

(2) Upon passage of the resolution or initiative, the judge of the appropriate judicial district shall, by court order, establish a small claims court under the provisions of this chapter.

(3) When the order is filed with the clerk of the district court of the appropriate county, the clerk of the district court becomes the clerk of the small claims court.

History: **En. 93-323 by Sec. 2, Ch. 519, L. 1975; R.C.M. 1947, 93-323; amd. Sec. 30, Ch. 21, L. 1979; amd. Sec. 378, Ch. 571, L. 1979.**

3-12-104. Duration of court. A small claims court created under this chapter continues in existence until abolished by the same means by which it was formed under 3-12-103. Any small claims court may be abolished by county initiative as provided in 3-12-103.

History: **En. 93-324 by Sec. 3, Ch. 519, L. 1975; R.C.M. 1947, 93-324.**

3-12-105. Location — hours. (1) The small claims court shall be located in the appropriate district and shall be open as required by the district judge.

(2) In the event that more than one small claims court judge has been appointed, the judges so appointed may divide their responsibility hereunder.

History: **En. 93-326 by Sec. 5, Ch. 519, L. 1975; R.C.M. 1947, 93-326(part).**

3-12-106. Jurisdiction — removal from district court. (1) The small claims court has original jurisdiction in all actions for the recovery of money or specific personal property when:

(a) such action arises out of a contract, express or implied;

(b) the amount of the claim, exclusive of costs, does not exceed $1,500; and

(c) the defendant can be served within the county or counties for which the small claims court has been created.

(2) More than one claim may be joined if all claims joined would separately meet the requirements for jurisdiction in the small claims court and the total value of money claimed or property sought does not exceed $1,500.

(3) A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not

exceed $1,500. The small claims court shall hear any action so removed from the district court.

History: **En. 93-329 by Sec. 8, Ch. 519, L. 1975; R.C.M. 1947, 93-329.**

Part 2

Small Claims Court Judge

3-12-201. Appointment — salary and expenses — qualifications. (1) The judges of the judicial district in which a small claims court has been created shall appoint a judge of the small claims court who shall:

(a) take the oath required of judges;

(b) serve at the pleasure of the district court judges;

(c) be paid a salary set by the district court judges and actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503; and

(d) be an attorney licensed to practice law in Montana.

(2) The judges of the district court may appoint more than one small claims court judge for any small claims court. The salary shall be prorated among the judges appointed.

History: **En. 93-325 by Sec. 4, Ch. 519, L. 1975; amd. Sec. 25, Ch. 344, L. 1977; R.C.M. 1947, 93-325; amd. Sec. 15, Ch. 528, L. 1979.**

Compiler's Comments

Transition. Sec. 16, Ch. 528, L. 1979, provided: "A judicial officer, as defined in 1-1-202, who is occupying his judicial office on the effective date of this act shall continue to be paid expenses on the same basis as he is receiving them on the effective date of this act until the expiration of his term of office. All judicial officers who take office or begin a new term of office after the effective date of this act shall receive expenses as provided in this act."

Severability. Sec. 17, Ch. 528, L. 1979, was a severability section.

3-12-202. Assistance to claimants. The small claims court judge shall assist any claimant in preparing an affidavit or may direct the clerk of court to provide such assistance.

History: **En. 93-326 by Sec. 5, Ch. 519, L. 1975; R.C.M. 1947, 93-326(part).**

3-12-203. Judge in multicounty district. (1) Where there is more than one county in the judicial district and the county commissioners of more than one county in that district create small claims courts, the district judges may provide that the same judge of small claims court may preside over more than one of the small claims courts in the judicial district.

(2) In such cases the salary of the small claims court judge shall be prorated among the counties in which he presides.

(3) The judge shall be entitled to collect mileage for the distance actually traveled when required to convene small claims court in more than one county, pursuant to 2-18-503.

History: **En. 93-327 by Sec. 6, Ch. 519, L. 1975; R.C.M. 1947, 93-327.**

CHAPTERS 13 AND 14

RESERVED

CHAPTER 15

JURIES AND JURORS

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3-15-102. Kinds of juries.
3-15-103. Grand jury defined.
3-15-104. Trial jury defined.
3-15-105. Jury of inquest defined.
3-15-106. Number of a trial jury.
3-15-107. Number in justices' courts.

Part 2 — Jurors' Fees

3-15-201. Fees in courts of record.
3-15-202. Time compensated for.
3-15-203. Fees in courts not of record and coroner's inquests.
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3-15-303. Who not competent.
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3-15-701. When and by whom jurors summoned.
3-15-702. How to be summoned.
3-15-703. Officer's return.
3-15-704. Forming jury.
3-15-705. Manner of impaneling.

Part 8 — Juries of Inquest

3-15-801. Summoning the juries.
3-15-802. Manner of impaneling.

Part 1

Juries — Definitions and Composition

3-15-101. Jury defined. A jury is a body of persons temporarily selected from the citizens of a particular district and invested with power to present or indict a person for a public offense or to try a question of fact.

History: En. Sec. 220, C. Civ. Proc. 1895; re-en. Sec. 6330, Rev. C. 1907; re-en. Sec. 8883, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 190; re-en. Sec. 8883, R.C.M. 1935; amd. Sec. 1, Ch. 203, L. 1939; R.C.M. 1947, 93-1201.

3-15-102. Kinds of juries. Juries are of three kinds:

(1) grand juries;
(2) trial juries;
(3) juries of inquest.

History: En. Sec. 221, C. Civ. Proc. 1895; re-en. Sec. 6331, Rev. C. 1907; re-en. Sec. 8884, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 191; re-en. Sec. 8884, R.C.M. 1935; R.C.M. 1947, 93-1202.

3-15-103. Grand jury defined. A grand jury is a body of persons, 11 in number, returned as provided by law from the citizens of a county before a court of competent jurisdiction and sworn to inquire into public offenses committed or triable within the county.

History: En. Sec. 222, C. Civ. Proc. 1895; re-en. Sec. 6332, Rev. C. 1907; re-en. Sec. 8885, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 192; re-en. Sec. 8885, R.C.M. 1935; amd. Sec. 2, Ch. 203, L. 1939; amd. Sec. 34, Ch. 344, L. 1977; R.C.M. 1947, 93-1203.

3-15-104. Trial jury defined. A trial jury is a body of persons returned from the citizens of a particular district before a court or officer of competent jurisdiction and sworn to try and determine, by verdict, a question of fact.

History: En. Sec. 223, C. Civ. Proc. 1895; re-en. Sec. 6333, Rev. C. 1907; re-en. Sec. 8886, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 193; re-en. Sec. 8886, R.C.M. 1935; amd. Sec. 3, Ch. 203, L. 1939; R.C.M. 1947, 93-1204.

3-15-105. Jury of inquest defined. A jury of inquest is a body of persons summoned from the citizens of a particular district before the sheriff, coroner, or other ministerial officer to inquire concerning particular facts.

History: En. Sec. 226, C. Civ. Proc. 1895; re-en. Sec. 6336, Rev. C. 1907; re-en. Sec. 8889, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 195; re-en. Sec. 8889, R.C.M. 1935; amd. Sec. 5, Ch. 203, L. 1939; R.C.M. 1947, 93-1207.

3-15-106. Number of a trial jury. (1) A trial jury consists of 12 persons; provided that, in civil actions and cases of misdemeanor, it may consist of 12 or any number less than 12 upon which the parties may agree in open court.

(2) In all civil actions where the relief asked for in the complaint is under the sum of $10,000, a trial jury may, in the discretion of the trial judge, consist of six persons and two-thirds of the jury may render a verdict.

History: En. Sec. 224, C. Civ. Proc. 1895; re-en. Sec. 6334, Rev. C. 1907; re-en. Sec. 8887, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 194; re-en. Sec. 8887, R.C.M. 1935; amd. Sec. 4, Ch. 203, L. 1939; amd. Sec. 1, Ch. 293, L. 1971; R.C.M. 1947, 93-1205(part).

3-15-107. Number in justices' courts. A jury in a justice's court, both in civil cases and misdemeanors, consists of six persons, but the parties may agree to a less number than six.

History: En. Sec. 225, C. Civ. Proc. 1895; re-en. Sec. 6335, Rev. C. 1907; re-en. Sec. 8888, R.C.M. 1921; re-en. Sec. 8888, R.C.M. 1935; R.C.M. 1947, 93-1206.

Part 2

Jurors' Fees

3-15-201. Fees in courts of record. (1) A grand or trial juror shall receive $12 per day for attendance before any court of record and a mileage allowance, as provided in 2-18-503, for traveling each way between his residence and the county seat.

(2) A juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice or who has been summoned as a special juror and not sworn in the trial of the case, in the discretion of the court, may receive per diem and mileage.

History: En. Sec. 1, Ch. 48, L. 1903; re-en. Sec. 3178, Rev. C. 1907; amd. Sec. 1, Ch. 6, L. 1917; re-en. Sec. 4933, R.C.M. 1921; amd. Sec. 1, Ch. 18, L. 1935; re-en. Sec. 4933, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1945; amd. Sec. 1, Ch. 117, L. 1963; amd. Sec. 1, Ch. 332, L. 1971; amd. Sec. 10, Ch. 439, L. 1975; amd. Sec. 16, Ch. 344, L. 1977; R.C.M. 1947, 25-401.

3-15-202. Time compensated for. A juror must be paid for each day's attendance for the term or session for which he was summoned until excused. He must be paid for all Sundays and legal holidays unless he resides within 10 miles from the courthouse. A juror residing within 10 miles from the courthouse at which he is summoned to appear shall receive no compensation for Sundays or legal holidays or for any days he may have been absent or excused from attending the court.

History: En. Sec. 2, p. 48, L. 1903; re-en. Sec. 3180, Rev. C. 1907; amd. Sec. 1, Ch. 23, L. 1913; re-en. Sec. 4934, R.C.M. 1921; re-en. Sec. 4934, R.C.M. 1935; R.C.M. 1947, 25-402.

3-15-203. Fees in courts not of record and coroner's inquests. (1) Jurors in courts not of record, in both civil and criminal actions, shall receive a fee of $12 per day. In civil actions, the jurors' fees must be paid by the party demanding the jury and taxed as costs against the losing party.

(2) Jurors in coroner's inquests shall receive a fee of $7.50 per day.

History: En. Sec. 4647, Pol. C. 1895; re-en. Sec. 3181, Rev. C. 1907; re-en. Sec. 4935, R.C.M. 1921; re-en. Sec. 4935, R.C.M. 1935; amd. Sec. 1, Ch. 206, L. 1947; amd. Sec. 1, Ch. 154, L. 1969; amd. Sec. 2, Ch. 332, L. 1971; amd. Sec. 17, Ch. 344, L. 1977; R.C.M. 1947, 25-403; amd. Sec. 1, Ch. 231, L. 1979.

3-15-204. Duties of clerk as to jurors. (1) The clerk must keep a record of the attendance of jurors and compute the amount due for mileage. The distance from any point to the county seat must be determined by the shortest traveled route.

(2) The clerk must give to each juror, at the time he is excused from further service, a certificate taken from a book containing a stub with a like designation, signed by himself under seal, in which must be stated the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due.

(3) On presentation of such certificate to the county treasurer, the amount specified in the certificate must be paid out of the general fund.

(4) The clerk must make a detailed statement containing a list of the jurors and the amount of fees and mileage earned by each and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board. No quarterly salary must be paid the clerk until such statement is filed. The board must examine such statement and see that it is correct.

History: En. Sec. 4645, Pol. C. 1895; re-en. Sec. 3179, Rev. C. 1907; re-en. Sec. 4937, R.C.M. 1921; re-en. Sec. 4937, R.C.M. 1935; R.C.M. 1947, 25-405.

Part 3

Jurors — Competency and Exemptions

3-15-301. Who competent. A person is competent to act as a juror if he is a registered elector whose name appears on the most recent list of all registered electors, as prepared by the county registrar.

History: Earlier statutes were Sec. 8, p. 506, Cod. Stat. 1871; amd. Sec. 1, p. 70, L. 1873; re-en. Sec. 780, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 57, L. 1881; re-en. Sec. 1304, 5th Div. Comp. Stat. 1887; re-en. Sec. 230, C. Civ. Proc. 1895; re-en. Sec. 6337, Rev. C. 1907; re-en. Sec. 8890, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 198; re-en. Sec. 8890, R.C.M. 1935; amd. Sec. 6, Ch. 203, L. 1939; amd. Sec. 1, Ch. 116, L. 1965; amd. Sec. 20, Ch. 240, L. 1971; amd. Sec. 32, Ch. 94, L. 1973; amd. Sec. 2, Ch. 298, L. 1975; R.C.M. 1947, 93-1301.

3-15-302. Inhabitants of local government jurisdiction competent. (1) On the trial of an action in which a city or town is interested, the inhabitants thereof are competent jurors if otherwise competent and qualified according to law.

(2) On the trial on an action in which the county is interested, the inhabitants of such county are competent jurors if otherwise competent and qualified according to law.

History: (1)En. Sec. 5042, Pol. C. 1895; re-en. Sec. 3941, Rev. C. 1907; re-en. Sec. 8891, R.C.M. 1921; re-en. Sec. 8891, R.C.M. 1935; Sec. 93-1302, R.C.M. 1947; (2)En. Sec. 341, 5th Div. Rev. Stat. 1879; re-en. Sec. 750, 5th Div. Comp. Stat. 1887; amd. Sec. 4198, Pol. C. 1895; re-en. Sec. 2878, Rev.

C. 1907; re-en. Sec. 4449, R.C.M. 1921; re-en. Sec. 4449, R.C.M. 1935; Sec. 16-810, R.C.M. 1947; R.C.M. 1947, 16-810, 93-1302.

3-15-303. Who not competent. A person is not competent to act as juror:

(1) who does not possess the qualifications prescribed by 3-15-301; or

(2) who has been convicted of malfeasance in office or any felony or other high crime.

History: En. Sec. 231, C. Civ. Proc. 1895; re-en. Sec. 6338, Rev. C. 1907; re-en. Sec. 8892, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 199; re-en. Sec. 8892, R.C.M. 1935; R.C.M. 1947, 93-1303.

3-15-304 through 3-15-310 reserved.

3-15-311. Who exempt. (1) A person is exempt from liability to act as a juror if he is:

(a) a judicial, civil, or military officer of the United States or of this state;

(b) a person holding a public office in this state or in a county, city, or town of this state;

(c) an attorney in practice;

(d) a member of the clergy of any religion following his profession;

(e) an editor following his profession;

(f) a teacher in a university, college, academy, or school;

(g) an employee of the Montana state school for the deaf and blind;

(h) a practicing physician, dentist, or druggist actually engaged in the business of dispensing medicines;

(i) a regularly licensed embalmer or undertaker;

(j) an officer, keeper, or attendant of a hospital, mental health facility, or other charitable institution;

(k) an officer or attendant of the state prison or a county jail on active duty;

(l) an express agent, mail carrier, or superintendent, employee, or operator of a telegraph line doing general telegraph business in this state;

(m) an active member of the national guard of Montana;

(n) an active member of a fire department of any city or town of this state;

(o) a superintendent on a railroad;

(p) a nurse engaged in a case; or

(q) a person caring directly for one or more children.

(2) The number of firefighters exempted under subsection (1)(n) may not exceed 28, including officers, for each company organized. The exempt members shall be selected from the roll of each company according to the seniority of membership. The secretary of each company shall make a list of the exempt members and file it with the clerk of the board of county commissioners on the first Mondays of March, June, September, and December. Failure to file the list is considered a waiver of the exemption.

(3) When a person claims exemption under subsection (1)(g), the certificate of the superintendent of the school, under the official seal of the school, is sufficient evidence of qualified employment.

History: En. Sec. 9, p. 506, Cod. Stat. 1871; re-en. Sec. 781, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 56, L. 1881; amd. Sec. 1, p. 101, L. 1883; re-en. Sec. 1305, 5th Div. Comp. Stat. 1887; amd. Sec. 232, C. Civ. Proc. 1895; re-en. Sec. 6339, Rev. C. 1907; amd. Sec. 1, Ch. 20, L. 1917; re-en.

Sec. 8893, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 200; re-en. Sec. 8893, R.C.M. 1935; amd. Sec. 7, Ch. 203, L. 1939; amd. Sec. 1, Ch. 425, L. 1971; amd. Sec. 35, Ch. 344, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 93-1304(1) thru (3).

3-15-312. Discharge by court. The court must discharge a person from serving as a trial juror in either of the following cases:

(1) when it satisfactorily appears that the person is not competent; or

(2) when it satisfactorily appears that the person is exempt and claims the benefit of exemption.

History: En. Sec. 9, p. 506, Cod. Stat. 1871; re-en. Sec. 781, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 56, L. 1881; amd. Sec. 1, p. 101, L. 1883; re-en. Sec. 1305, 5th Div. Comp. Stat. 1887; amd. Sec. 232, C. Civ. Proc. 1895; re-en. Sec. 6339, Rev. C. 1907; amd. Sec. 1, Ch. 20, L. 1917; re-en. Sec. 8893, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 200; re-en. Sec. 8893, R.C.M. 1935; amd. Sec. 7, Ch. 203, L. 1939; amd. Sec. 1, Ch. 425, L. 1971; amd. Sec. 35, Ch. 344, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 93-1304(4).

3-15-313. Who may be excused. A juror must not be excused by a court for a slight or trivial cause or for hardship or inconvenience to his business but only when material injury or destruction to his property or property entrusted to him is threatened or when his own health or the sickness or death of a member of his family requires his absence.

History: En. Sec. 233, C. Civ. Proc. 1895; re-en. Sec. 6340, Rev. C. 1907; re-en. Sec. 8894, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 201; re-en. Sec. 8894, R.C.M. 1935; amd. Sec. 8, Ch. 203, L. 1939; R.C.M. 1947, 93-1305.

3-15-314. Affidavit of claim to exemption. (1) If a person exempt from liability to act as a juror as provided in 3-15-311 be summoned as a juror, he may make and transmit his affidavit to the clerk of the court for which he is summoned, stating his office, occupation, or employment.

(2) Such affidavit must be delivered by the clerk to the judge of the court where the name of such person is called and, if sufficient in substance, must be received as evidence of his right to exemption and as an excuse for nonattendance in person. The affidavit must then be filed by the clerk.

History: En. Sec. 234, C. Civ. Proc. 1895; re-en. Sec. 6341, Rev. C. 1907; re-en. Sec. 8895, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 202; re-en. Sec. 8895, R.C.M. 1935; amd. Sec. 9, Ch. 203, L. 1939; R.C.M. 1947, 93-1306.

3-15-315 through 3-15-320 reserved.

3-15-321. Attachment and fine for failure to attend. Any juror summoned who willfully and without reasonable excuse fails to attend may be attached and compelled to attend. The court may impose a fine not exceeding $50, upon which execution may issue. If the juror was not personally served, the fine must not be imposed until, upon an order to show cause, an opportunity has been offered the juror to be heard. The court may for good cause remit, modify, or cause any fine collected to be refunded.

History: En. Sec. 310, C. Civ. Proc. 1895; re-en. Sec. 6363, Rev. C. 1907; re-en. Sec. 8917, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 238; re-en. Sec. 8917, R.C.M. 1935; R.C.M. 1947, 93-1701.

Part 4

Jury Lists

3-15-401. Jury lists — by whom and when made. The chairman or, in his absence, any member of the board of county commissioners and the county clerk and recorder of each county must meet at the county seat of each county at the office of the county clerk and recorder on the second Monday of December of each year for the purpose of making a list of persons to serve as trial jurors for the ensuing year. If they fail to meet on the day specified in this section, they must meet as soon thereafter as practicable.

History: En. Sec. 240, C. Civ. Proc. 1895; re-en. Sec. 6342, Rev. C. 1907; re-en. Sec. 8896, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 204; re-en. Sec. 8896, R.C.M. 1935; amd. Sec. 1, Ch. 133, L. 1949; amd. Sec. 1, Ch. 86, L. 1959; R.C.M. 1947, 93-1401(part); amd. Sec. 1, Ch. 313, L. 1979.

3-15-402. Selection of qualified persons. At the meeting specified in 3-15-401, the officers present must select from the most recent list of all registered electors, as prepared by the county registrar, and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in part 3 of this chapter. Each name so appearing on said list shall be assigned a number which shall be placed opposite the name on the jury list and shall be considered the number of the juror opposite whose name it appears. Said numbers shall be consecutive from "1" to the total number of jurors.

History: En. Sec. 241, C. Civ. Proc. 1895; re-en. Sec. 6343, Rev. C. 1907; amd. Sec. 1, Ch. 80, L. 1919; re-en. Sec. 8897, R.C.M. 1921; re-en. Sec. 8897, R.C.M. 1935; amd. Sec. 1, Ch. 168, L. 1957; amd. Sec. 1, Ch. 298, L. 1975; R.C.M. 1947, 93-1402.

3-15-403. Lists delivered to clerk. A list of the names of the persons selected, showing the place of residence and other proper particulars regarding each of them, so far as those particulars can be conveniently ascertained, must be made out and signed by the officers or a majority of them. Within 5 days after the meeting, the list must be delivered by those officers to the clerk of the district court and filed by him in his office.

History: En. Sec. 242, C. Civ. Proc. 1895; re-en. Sec. 6344, Rev. C. 1907; re-en. Sec. 8898, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 208; re-en. Sec. 8898, R.C.M. 1935; R.C.M. 1947, 93-1403; amd. Sec. 31, Ch. 21, L. 1979.

3-15-404. Duty of clerk — jury box. The clerk shall prepare and keep a jury box and contents as prescribed in this section. The number of each juror shall be written, typed, or stamped on a slip of paper or other suitable material, identical in all respects to the slips used for the other numbers. The slips shall be placed in a box of ample size to permit them to be thoroughly mixed. The box shall be plainly marked "jury box". The slips may be used as often as necessary, except that none may be used which is in any manner defaced or disfigured or so marked that it may be recognized or distinguished from the others in the jury box except by the number thereon. The box shall contain only one slip for each number corresponding to the number before the name of each juror on the jury list.

History: En. Sec. 243, C. Civ. Proc. 1895; re-en. Sec. 6345, Rev. C. 1907; amd. Sec. 1, Ch. 35, L. 1919; re-en. Sec. 8899, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 209; re-en. Sec. 8899, R.C.M. 1935; amd. Sec. 2, Ch. 168, L. 1957; amd. Sec. 1, Ch. 110, L. 1969; amd. Sec. 56, Ch. 344, L. 1977; R.C.M. 1947, 93-1404.

3-15-405 through 3-15-410 reserved.

3-15-411. Term of service of jurors. (1) The persons whose names are so returned are known as regular jurors and must serve for 1 year and until other persons are selected and returned unless they are excused by the court or a judge pursuant to 3-15-501.

(2) If jurors are drawn before the selection and return of the new jury list as provided in this part and thereafter a new jury list is returned, they shall continue to serve as jurors, if the business of the court requires the attendance of a jury, for a period not exceeding 90 days.

(3) Notwithstanding such limitation of service, a jury composed of such jurors duly impaneled to try any cause shall continue to serve in such cause until discharged by the court from any further consideration of such cause. The fact that a new jury list has been returned shall not affect their status as jurors.

History: En. Sec. 245, C. Civ. Proc. 1895; re-en. Sec. 6347, Rev. C. 1907; re-en. Sec. 8901, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 210; amd. Sec. 1, Ch. 135, L. 1931; re-en. Sec. 8901, R.C.M. 1935; amd. Sec. 1, Ch. 4, L. 1947; R.C.M. 1947, 93-1406; amd. Sec. 2, Ch. 313, L. 1979.

Part 5

Trial Juries — District Court

3-15-501. Order directing that trial jury be drawn and summoned. (1) At least once each year in each county, when a civil or criminal case has been at issue and ready for trial for more than 6 months and the plaintiff or defendant in such case has requested a jury trial or whenever the business of a district court requires the attendance of a trial jury for the trial of civil or criminal cases and no jury is in attendance, the court must make an order directing a trial jury to be drawn and summoned to attend before said court. Such order must specify the number of jurors to be drawn and the time at which the jurors are required to attend, which time may be at the same term in which the jurors are drawn or at the next succeeding term, in the discretion of the court.

(2) The court may direct that such causes, either criminal or civil, in which a jury may be required or in which a jury may have been demanded be continued and fixed for trial when a jury shall be in attendance.

(3) A district court may draw more than one trial jury in a given year if, in the opinion of the judge or judges thereof, the service of the trial jury in attendance has been unduly demanding, and in such case the trial jury in attendance may be excused by the court from further jury duty in that year.

(4) The judge or judges of a district or the judge of a department may designate that jury service in his or their district or department is on a "one-day or one-trial" basis; that is, each individual juror is excused for the rest of the year after having attended for 1 day and not having been selected to serve at the trial of a particular cause or after having completed service at such a trial.

(5) If the number of unexcused jurors is not sufficient to meet current requirements at any time, jurors excused under subsection (3) or (4) may be required to serve.

History: En. Sec. 260, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 7, L. 1907; re-en. Sec. 6348, Rev. C. 1907; re-en. Sec. 8902, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 214; re-en. Sec. 8902, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1949; R.C.M. 1947, 93-1501; amd. Sec. 3, Ch. 313, L. 1979.

3-15-502. District judge to draw jury. Immediately after the order mentioned in 3-15-501 has been made, the district judge shall in the presence of the clerk of the court proceed to draw the jurors by number from the jury box.

History: En. Sec. 261, C. Civ. Proc. 1895; re-en. Sec. 6349, Rev. C. 1907; re-en. Sec. 8903, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 215; re-en. Sec. 8903, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1937; amd. Sec. 1, Ch. 3, L. 1939; amd. Sec. 3, Ch. 168, L. 1957; amd. Sec. 57, Ch. 344, L. 1977; R.C.M. 1947, 93-1502.

3-15-503. Drawing — how conducted. (1) The clerk shall place the box on a rod so that it may readily revolve. The box must be revolved a sufficient number of times to ensure that the numbered slips in it become thoroughly mixed. Thereafter the judge shall draw from the box, one at a time, as many of the numbered slips as are ordered by the court.

(2) A record of the drawing shall be entered in the minutes of the court. It must show the names of the jurors corresponding to the numbers drawn from the jury box.

(3) If the court is satisfied that any person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person shall be omitted from the list and another name shall be drawn in its place. The reason for the omission shall be entered upon the minutes of the court. The same procedure shall be followed as often as may be necessary, until the number of names of jurors required has been drawn.

(4) No person may be asked to serve for more than one term during any year unless all the numbers in the jury box have been drawn and there are no other qualified jurors available.

History: En. Sec. 262, C. Civ. Proc. 1895; re-en. Sec. 6350, Rev. C. 1907; amd. Sec. 2, Ch. 35, L. 1919; re-en. Sec. 8904, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 219; amd. Sec. 1, Ch. 148, L. 1933; re-en. Sec. 8904, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1937; amd. Sec. 2, Ch. 3, L. 1939; amd. Sec. 4, Ch. 168, L. 1957; amd. Sec. 2, Ch. 110, L. 1969; amd. Sec. 36, Ch. 344, L. 1977; R.C.M. 1947, 93-1503; amd. Sec. 4, Ch. 313, L. 1979.

3-15-504. Drawing by two or more judges in same district. In districts where there are two or more judges, each judge may order jurors drawn and summoned to attend the session or term over which he presides, as provided in this part.

History: En. Sec. 267, C. Civ. Proc. 1895; re-en. Sec. 6355, Rev. C. 1907; re-en. Sec. 8909, R.C.M. 1921; re-en. Sec. 8909, R.C.M. 1935; R.C.M. 1947, 93-1508.

3-15-505. Notice to jurors. The clerk shall serve notice by mail on the persons drawn as jurors and require response thereto by mail in such form as the supreme court designates. He may attach to the notice a form for an affidavit claiming exemption, provided for in 3-15-314. If a person fails to respond to the notice, the clerk shall certify the failure to the sheriff, who shall then serve notice personally on such person and require a response to the notice.

History: En. Sec. 280, C. Civ. Proc. 1895; re-en. Sec. 6356, Rev. C. 1907; amd. Sec. 1, Ch. 9, L. 1911; re-en. Sec. 8910, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 225; re-en. Sec. 8910, R.C.M. 1935; amd. Sec. 1, Ch. 88, L. 1959; R.C.M. 1947, 93-1509; amd. Sec. 5, Ch. 313, L. 1979.

3-15-506. Obtaining additional jurors when necessary. (1) Whenever it appears to a district judge that additional jurors will be needed for any term or trial, the judge shall draw as many numbers from the jury box as are necessary to secure the required number of additional jurors.

Before drawing the numbers, the judge shall by appropriate order designate the number of jurors needed.

(2) When the judge believes that securing the additional jurors from all of the county would cause unnecessary delay or expense, he may order the jurors selected from only a designated portion of the county, which portion shall never be less than the corporate limits of the county seat. If, in the selection of the additional jurors, a number is drawn and the jury list shows the person represented by the number to be a resident of an area outside the area designated by the court order, that number shall be returned to the jury box and a new number drawn.

(3) When the required number of names have been selected, the judge may order the prospective jurors notified by telephone or mail by the clerk of the court.

History: En. Sec. 3, Ch. 110, L. 1969; amd. Sec. 58, Ch. 344, L. 1977; R.C.M. 1947, 93-1512; amd. Sec. 6, Ch. 313, L. 1979.

3-15-507. Clerk to call list of jurors summoned and prepare capsules. (1) At the opening of court on the day trial jurors have been summoned to appear, the clerk shall call the names of those summoned and the court may hear the excuses of jurors summoned.

(2) The clerk shall write the names of the jurors present and not excused on separate ballots, fold the ballots so that the names are concealed, and place them in black capsules. In the presence of the court, the clerk shall deposit the capsules containing the ballots in a box large enough to hold all of the capsules without crowding. The box shall be so arranged that the judge drawing the capsules from the box is unable to see the capsules he is about to draw. The box must be kept sealed or locked until ordered by the court to be opened.

History: En. Sec. 330, C. Civ. Proc. 1895; re-en. Sec. 6368, Rev. C. 1907; amd. Sec. 8, Ch. 35, L. 1919; re-en. Sec. 8922, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 246; re-en. Sec. 8922, R.C.M. 1935; amd. Sec. 40, Ch. 344, L. 1977; R.C.M. 1947, 93-1805.

3-15-508. Inspection of capsules. It shall be the duty of the judge in whose department the jurors are serving, at least once every 2 weeks during said jury term, to inspect all capsules containing ballots for the purpose of ascertaining whether such capsules are marked or defaced or have any mark of identification thereon. When any marked or defaced capsules are found, the judge shall order said capsule or capsules to be replaced by others free from any mark or defacement.

History: En. Sec. 6369A, Rev. C. 1907 by Sec. 9, Ch. 35, L. 1919; re-en. Sec. 8924, R.C.M. 1921; re-en. Sec. 8924, R.C.M. 1935; R.C.M. 1947, 93-1807.

3-15-509. Manner of impaneling. (1) Whenever a civil action is called by the court for trial and a jury is required, the trial jury shall be impaneled as prescribed in Title 25, chapter 7, part 2, and M.R.Civ.P., Rule 47.

(2) When the action is a criminal one, the jury shall be impaneled as prescribed in Title 46.

History: En. Sec. 331, C. Civ. Proc. 1895; re-en. Sec. 6369, Rev. C. 1907; re-en. Sec. 8923, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 247; re-en. Sec. 8923, R.C.M. 1935; amd. Sec. 41, Ch. 344, L. 1977; R.C.M. 1947, 93-1806.

Part 6

Grand Juries

3-15-601. When and how drawn and summoned. (1) Whenever in the opinion of the district judge a grand jury is necessary, he must make an order directing a grand jury to be drawn and summoned to attend before the court. The order must specify the number of jurors to be drawn, which may not be less than 15 or more than 20.

(2) The jurors must be drawn from the jury box mentioned in 3-15-404. The list of names shall be certified and the jurors summoned in the same manner as for trial jurors. The numbers of any persons drawn who are not impaneled on the grand jury must be returned to the jury box.

History: En. Sec. 320, C. Civ. Proc. 1895; re-en. Sec. 6364, Rev. C. 1907; re-en. Sec. 8918, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 241; re-en. Sec. 8918, R.C.M. 1935; amd. Sec. 4, Ch. 3, L. 1973; amd. Sec. 59, Ch. 344, L. 1977; R.C.M. 1947, 93-1801; amd. Sec. 32, Ch. 21, L. 1979.

3-15-602. Who constitutes jury. (1) When 11 of the persons summoned as grand jurors who are competent and not excused are present, they constitute the grand jury.

(2) When more than 11 are present, the clerk shall write their names on separate ballots and place the ballots in black capsules. The capsules shall be deposited in a box large enough to hold all of the capsules without crowding. The box shall be so arranged that the clerk drawing the capsules from the box is unable to see the capsule he is about to draw. The clerk shall draw 11 capsules. The persons whose names are on the ballots so drawn shall constitute the grand jury.

(3) When less than 11 are present, the court shall order a sufficient number to be immediately drawn from the jury box and summoned to attend the court.

History: En. Sec. 321, C. Civ. Proc. 1895; re-en. Sec. 6365, Rev. C. 1907; amd. Sec. 7, Ch. 35, L. 1919; re-en. Sec. 8919, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 242; re-en. Sec. 8919, R.C.M. 1935; amd. Sec. 5, Ch. 3, L. 1973; amd. Sec. 38, Ch. 344, L. 1977; R.C.M. 1947, 93-1802.

3-15-603. Manner of impaneling. After the jurors have been selected, the grand jury shall be impaneled as prescribed in 46-11-301 through 46-11-303.

History: En. Sec. 322, C. Civ. Proc. 1895; re-en. Sec. 6366, Rev. C. 1907; re-en. Sec. 8920, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 243; re-en. Sec. 8920, R.C.M. 1935; amd. Sec. 39, Ch. 344, L. 1977; R.C.M. 1947, 93-1803.

3-15-604. Drawing and summoning in multijudge districts. In districts where there are two or more judges, each judge may order a grand jury to be drawn and summoned to attend the session or term over which he presides, as provided in this part, but no more than one grand jury must ever be in attendance upon any district court at the same time.

History: En. Sec. 323, C. Civ. Proc. 1895; re-en. Sec. 6367, Rev. C. 1907; re-en. Sec. 8921, R.C.M. 1921; re-en. Sec. 8921, R.C.M. 1935; R.C.M. 1947, 93-1804.

Part 7

Juries in Inferior Courts

3-15-701. When and by whom jurors summoned. When jurors are required in any justice's or city court or any other court of limited jurisdiction, they must, upon the order of the justice or of the judge thereof, be summoned by the sheriff, constable, marshal, or policeman of the jurisdiction.

History: En. Sec. 290, C. Civ. Proc. 1895; re-en. Sec. 6359, Rev. C. 1907; re-en. Sec. 8913, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 230; re-en. Sec. 8913, R.C.M. 1935; R.C.M. 1947, 93-1601; amd. Sec. 8, Ch. 466, L. 1979.

3-15-702. How to be summoned. Such jurors must be summoned from the persons competent to serve as jurors, residents of the county, city, or town in which such court has jurisdiction, by notifying them orally that they are summoned and of the time and place at which their attendance is required.

History: En. Sec. 291, C. Civ. Proc. 1895; re-en. Sec. 6360, Rev. C. 1907; re-en. Sec. 8914, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 231; re-en. Sec. 8914, R.C.M. 1935; amd. Sec. 14, Ch. 491, L. 1973; R.C.M. 1947, 93-1602.

3-15-703. Officer's return. The officer summoning the jurors shall, at the time fixed in the order for their appearance, return the order to the court with a list of the persons summoned endorsed thereon.

History: En. Sec. 292, C. Civ. Proc. 1895; re-en. Sec. 6361, Rev. C. 1907; re-en. Sec. 8915, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 232; re-en. Sec. 8915, R.C.M. 1935; amd. Sec. 37, Ch. 344, L. 1977; R.C.M. 1947, 93-1603.

3-15-704. Forming jury. At the time appointed for a jury trial in a justice's or city court or any other court of limited jurisdiction, the list of jurors summoned must be called. The jurors summoned shall be 12 in number or double the number agreed upon by the parties before the trial. The names of those attending and not excused must be written upon separate slips of paper, which slips must be folded so as to conceal the names, and placed in a box from which the trial jury must be drawn.

History: En. Sec. 340, C. Civ. Proc. 1895; re-en. Sec. 6370, Rev. C. 1907; re-en. Sec. 8925, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 250; re-en. Sec. 8925, R.C.M. 1935; R.C.M. 1947, 93-1808; amd. Sec. 33, Ch. 21, L. 1979; amd. Sec. 9, Ch. 466, L. 1979.

3-15-705. Manner of impaneling. The jury shall be impaneled as provided in:

(1) Title 46, if the action is a criminal one;

(2) Title 25, chapter 7, part 2, and M.R.Civ.P., Rule 47, if the action is a civil one.

History: En. Sec. 341, C. Civ. Proc. 1895; re-en. Sec. 6371, Rev. C. 1907; re-en. Sec. 8926, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 251; re-en. Sec. 8926, R.C.M. 1935; amd. Sec. 42, Ch. 344, L. 1977; R.C.M. 1947, 93-1809.

Part 8

Juries of Inquest

3-15-801. Summoning the juries. Juries of inquest shall be summoned by the officer before whom the proceedings in which they are to sit are to be had or by any sheriff, constable, or policeman from the persons competent to serve as jurors, residents of the county, by notifying them orally that they are so summoned and of the time and place at which their attendance is required.

History: En. Sec. 300, C. Civ. Proc. 1895; re-en. Sec. 6362, Rev. C. 1907; re-en. Sec. 8916, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 235; re-en. Sec. 8916, R.C.M. 1935; R.C.M. 1947, 93-1604.

3-15-802. Manner of impaneling. The manner of impaneling juries of inquest is prescribed in the provisions of the different statutes relating to such inquests.

History: En. Sec. 350, C. Civ. Proc. 1895; re-en. Sec. 6372, Rev. C. 1907; re-en. Sec. 8927, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 254; re-en. Sec. 8927, R.C.M. 1935; R.C.M. 1947, 93-1810.

TITLE 4

RESERVED

TITLE 5

LEGISLATIVE BRANCH

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6. Legislative Interns.
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CHAPTER 1

CONGRESSIONAL, SENATORIAL, AND REPRESENTATIVE DISTRICTS

Part 1 — Reapportionment Commission

Section
5-1-101. Commission to redistrict and reapportion.
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Part 1

Reapportionment Commission

5-1-101. Commission to redistrict and reapportion. In each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts.

History: En. Sec. 1, Ch. 21, L. 1973; amd. Sec. 1, Ch. 204, L. 1977; R.C.M. 1947, 43-108.

5-1-102. Composition of commission. The majority and minority leaders of each house shall each designate one commissioner. Two commissioners must be residents of the western congressional district and two commissioners must be residents of the eastern congressional district. The majority leader in each house shall have first choice of the congressional district from which he will select a commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

History: **En. Sec. 2, Ch. 21, L. 1973; R.C.M. 1947, 43-109.**

5-1-103. Vacancy on commission. In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

History: **En. Sec. 3, Ch. 21, L. 1973; R.C.M. 1947, 43-110.**

5-1-104. Compensation and expenses. Commissioners are entitled to compensation of $20 per day plus travel expenses, as provided for in 2-18-501 through 2-18-503, while attending commission meetings or carrying out the official duties of the commission.

History: **En. Sec. 4, Ch. 21, L. 1973; amd. Sec. 18, Ch. 439, L. 1975; R.C.M. 1947, 43-111.**

5-1-105. Restriction on commissioners seeking election to legislature. A member of the commission may not run for election to a legislative seat within 2 years after the districting and apportionment plan in which he participated becomes effective.

History: **En. Sec. 11, Ch. 21, L. 1973; R.C.M. 1947, 43-118.**

5-1-106. Legislative council to provide technical and clerical services. The executive director of the legislative council, under the direction of the commission, shall provide the technical staff and clerical services which the commission needs to prepare its districting and apportionment plan.

History: **En. Sec. 5, Ch. 21, L. 1973; R.C.M. 1947, 43-112.**

5-1-107. Assistance of state agencies. Upon request state agencies shall cooperate with the commission and furnish technical assistance and consulting personnel.

History: **En. Sec. 6, Ch. 21, L. 1973; R.C.M. 1947, 43-113.**

5-1-108. Public hearing on plan. Before the commission submits its plan to the legislature, it shall hold at least one public hearing on the plan at the state capitol. The commission may hold other hearings as it deems necessary.

History: **En. Sec. 7, Ch. 21, L. 1973; R.C.M. 1947, 43-114.**

5-1-109. Submission of plan to legislature. The commission shall submit its plan to the legislature by the 10th legislative day of the first regular session after its appointment or after the census figures are available.

History: **En. Sec. 8, Ch. 21, L. 1973; R.C.M. 1947, 43-115.**

5-1-110. Recommendations of legislature. Within 30 days after the commission submits its plan to the legislature, the legislature shall return the plan to the commission with its recommendations.

History: **En. Sec. 9, Ch. 21, L. 1973; R.C.M. 1947, 43-116.**

5-1-111. Final plan — dissolution of commission. Within 30 days after receiving the plan and the legislature's recommendations, the commission shall file its final plan with the secretary of state. Upon filing, the plan shall become law and the commission shall be dissolved.

History: **En. Sec. 10, Ch. 21, L. 1973; R.C.M. 1947, 43-117.**

CHAPTER 2

LEGISLATURE — COMPOSITION AND ORGANIZATION

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Part 1

General

5-2-101. Composition of legislature. The legislature consists of senators and representatives elected from the several senatorial and representative districts of the state in the number specified by law.

History: En. Sec. 150, Pol. C. 1895; re-en. Sec. 50, Rev. C. 1907; amd. Sec. 1, Ch. 5, L. 1921; re-en. Sec. 51, R.C.M. 1921; re-en. Sec. 51, R.C.M. 1935; R.C.M. 1947, 43-201.

5-2-102. Term of office. The term of office of a senator is 4 years or until his successor is elected and qualified and of a representative 2 years or until his successor is elected and qualified. The term of service shall begin on the first Monday of January next succeeding his election. If a senator is elected to fill a vacancy, his term of service shall begin on the next day after his election.

History: En. Sec. 151, Pol. C. 1895; re-en. Sec. 51, Rev. C. 1907; amd. Sec. 1, Ch. 17, L. 1909; re-en. Sec. 52, R.C.M. 1921; Cal. Pol. C. Sec. 226; re-en. Sec. 52, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1975; amd. Sec. 1, Ch. 198, L. 1977; R.C.M. 1947, 43-202.

5-2-103. Time and place of meeting. Each regular session of the legislature shall be convened at the seat of government at 12 noon on the first Monday of January of each odd-numbered year or, if January 1 is a Monday, on the first Wednesday. The legislature shall meet at other times when convened by the governor or by the written request of a majority of the legislators or, when the legislature is in session, by a recorded vote of a majority of the legislators.

History: En. Sec. 160, Pol C. 1895; re-en. Sec. 55, Rev. C. 1907; re-en. Sec. 55, R.C.M. 1921; Cal. Pol. C. Sec. 235; re-en. Sec. 55, R.C.M. 1935; amd. Sec. 1, Ch. 279, L. 1973; amd. Sec. 5, Ch. 309, L. 1977; R.C.M. 1947, 43-205.

5-2-104. Appointment to or candidacy for other offices. (1) No member of the legislature may, during the term for which he was elected, be appointed to any civil office under the state. A member of the legislature may become a candidate for public office during his term.

(2) A member of the legislature who is elected to other public office shall resign from the legislature prior to assuming the office to which he was newly elected.

History: En. 43-202.2 and 43-202.3 by Secs. 2, 3, Ch. 91, L. 1977; R.C.M. 1947, 43-202.2, 43-202.3.

Part 2

Organization

5-2-201. Presession caucus. As soon after the official canvass as possible, but not later than December 1 of each year following an election when members of the legislature are elected, the majority and minority parties of each house of the legislature shall hold a presession caucus for holdover senators, senators-elect, and representatives-elect. The purpose of the caucus of each party of each house is to elect officers, appoint committees, and hire any necessary employees.

History: En. Sec. 2, Ch. 274, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 1, Ch. 392, L. 1975; amd. Sec. 19, Ch. 439, L. 1975; amd. Sec. 1, Ch. 103, L. 1977; R.C.M. 1947, 43-218(1).

5-2-202. Presession activity. (1) Members of the legislature elected to leadership positions during the presession caucus and members appointed to the legislative administration committees, committee on committees, and rules committees may meet and perform necessary organizational tasks prior to the session, including but not limited to appointing committees, hiring staff, and assigning space and seating.

(2) Members of the house appropriations committee and of the senate finance and claims committee named at the presession caucus may begin reviewing requests for appropriations immediately and may visit state agencies and institutions to discuss requests.

History: En. 43-218.1 by Sec. 2, Ch. 103, L. 1977; R.C.M. 1947, 43-218.1(1); amd. Sec. 1, Ch. 551, L. 1979.

5-2-203. Compensation and expenses. (1) Members of the legislature attending the presession caucus are entitled to receive compensation and expenses as provided in 5-2-302.

(2) While engaged in presession business, members elected to leadership positions and members of the committees named in 5-2-202 are entitled to receive compensation and expenses as provided in 5-2-302.

History: (1)En. Sec. 2, Ch. 274, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 1, Ch. 392, L. 1975; amd. Sec. 19, Ch. 439, L. 1975; amd. Sec. 1, Ch. 103, L. 1977; Sec. 43-218, R.C.M. 1947; (2)En. 43-218.1 by Sec. 2, Ch. 103, L. 1977; Sec. 43-218.1, R.C.M. 1947; R.C.M. 1947, 43-218(2), 43-218.1(2); amd. Sec. 2, Ch. 551, L. 1979.

5-2-204 through 5-2-210 reserved.

5-2-211. Certified rosters. The secretary of state shall prepare certified rosters from the official election records on file in his office for use in the organization of the senate and house of representatives.

History: En. Sec. 1, Ch. 18, L. 1969; R.C.M. 1947, 43-206.1.

5-2-212. Organization of senate. At 12 noon on the day appointed for the meeting of any regular session of the legislature, the president of the senate, or in case of his absence or inability then the senior member present, must take the chair, call the senators and senators-elect to order, call over the senators from the certified roster prepared by the secretary of state, and then, from the certified roster prepared by the secretary of state, call over the senatorial districts and counties, in their order, from which members have been elected at the preceding election. After the same are called the members-elect must take the constitutional oath of office and assume their seats. The senate may thereupon, if a quorum is present, proceed to elect its officers.

History: En. H.B. No. 69, p. 103, L. 1897; re-en. Sec. 163, Pol. C. 1895; re-en. Sec. 57, Rev. C. 1907; re-en. Sec. 57, R.C.M. 1921; Cal. Pol. C. Sec. 238; re-en. Sec. 57, R.C.M. 1935; amd. Sec. 2, Ch. 18, L. 1969; R.C.M. 1947, 43-207.

5-2-213. Organization of house of representatives. At the time specified in 5-2-212, the secretary of state, or in case of his absence or inability then the senior member-elect present, must take the chair, call the members-elect of the house of representatives to order, and then, from the certified roster prepared by the secretary of state, call over the roll of counties and districts. After the same are called the members-elect must take the constitutional oath of office and assume their seats. The house of representatives may thereupon, if a quorum is present, proceed to elect its officers.

History: En. Sec. 164, Pol. C. 1895; re-en. Sec. 58, Rev. C. 1907; re-en. Sec. 58, R.C.M. 1921; Cal. Pol. C. Sec. 239; re-en. Sec. 58, R.C.M. 1935; amd. Sec. 3, Ch. 18, L. 1969; R.C.M. 1947, 43-208.

5-2-214. Oath to be entered on journals. An entry of the oath taken by the members of the legislature must be made on the journals of the proper houses, respectively.

History: En. Sec. 165, Pol. C. 1895; re-en. Sec. 59, Rev. C. 1907; re-en. Sec. 59, R.C.M. 1921; Cal. Pol. C. Sec. 240; re-en. Sec. 59, R.C.M. 1935; R.C.M. 1947, 43-209.

5-2-215. Election of officers. In all elections of officers of either branch of the legislature, a majority of all the votes given is necessary to a choice.

History: En. Sec. 8, p. 90, L. 1885; re-en. Sec. 1332, 5th Div. Comp. Stat. 1887; re-en. Sec. 166, Pol. C. 1895; re-en. Sec. 60, Rev. C. 1907; re-en. Sec. 60, R.C.M. 1921; re-en. Sec. 60, R.C.M. 1935; R.C.M. 1947, 43-210.

5-2-216. Tie vote. In the event there is a tie vote for the purposes of organizing the senate or the house of representatives then, for the purposes of organization, the political party's candidate for president of the senate or speaker of the house then having a member of his party as the governor of Montana shall be deemed to be elected.

History: En. Sec. 1, Ch. 25, L. 1973; R.C.M. 1947, 43-210.1.

5-2-217 through 5-2-220 reserved.

5-2-221. Officers of the senate and house of representatives. (1) The elected officers of the senate include a president, a president pro tempore, a secretary, and a chaplain. A sergeant-at-arms shall be appointed by the committee on committees.

(2) The elected officers of the house of representatives include a speaker, a speaker pro tempore, a chief clerk, and a chaplain. A sergeant-at-arms shall be appointed by the speaker.

(3) All of the foregoing officers shall be elected or appointed by the house in which they are employed.

History: En. 43-214.1 by Sec. 1, Ch. 186, L. 1974; amd. Sec. 1, Ch. 88, L. 1977; R.C.M. 1947, 43-214.1.

5-2-222. Powers and duties of officers. The president and president pro tem of the senate and the speaker and speaker pro tem of the house of representatives may administer the oath of office to any senator or representative and to the officers and employees of their respective bodies. The officers and employees must perform such duties as are required by the rules or orders of the respective bodies which elect them.

History: En. Secs. 4 and 5, p. 170, L. 1891; re-en. Sec. 200, Pol. C. 1895; re-en. Sec. 67, Rev. C. 1907; re-en. Sec. 65, R.C.M. 1921; Cal. Pol. C. Sec. 252; re-en. Sec. 65, R.C.M. 1935; R.C.M. 1947, 43-301(part).

Part 3

Compensation and Expenses of Members and Officers

5-2-301. Compensation and expenses for members while in session. (1) Legislators are entitled to a salary commensurate to that of the daily rate of a grade 8, step 2 classified state employee, for those days during which the legislature is in session. The president of the senate and the speaker of the house shall receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators are entitled to $40 a day, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments shall stop when the legislature recesses for more than 3 days and shall resume when the legislature reconvenes.

(3) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel:

(a) to the place of the holding of the session and to return to their place of residence at the conclusion of the session; and

(b) for one additional round trip to their place of residence during each session.

(4) Legislators are not entitled to any additional mileage allowance under subsection (3)(a) or (3)(b) for a special session if it is convened within 7 days of a regular session.

History: En. Sec. 220, Pol. C. 1895; re-en. Sec. 77, Rev. C. 1907; amd. Sec. 1, Ch. 45, L. 1909; re-en. Sec. 74, R.C.M. 1921; Cal. Pol. C. Sec. 266; re-en. Sec. 74, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1955; amd. Sec. 1, Ch. 32, L. 1963; amd. Sec. 1, Ch. 180, L. 1965; amd. Sec. 1, Ch. 274, L. 1969; amd. Sec. 1, Ch. 4, L. 1971; amd. Sec. 1, Ch. 72, L. 1973; amd. Sec. 1, Ch. 5, L. 1975; amd. Sec. 2, Ch. 392, L. 1975; amd. Sec. 20, Ch. 439, L. 1975; amd. Sec. 3, Ch. 103, L. 1977; R.C.M. 1947, 43-310; amd. Sec. 2, Ch. 650, L. 1979.

5-2-302. Compensation and expenses when legislature not in session. When the legislature is not in session, members of the legislative council, legislative subcommittees, and select and interim committees, while engaged in committee business authorized by the legislative council, are entitled to:

(1) a mileage allowance as provided in 2-18-503;

(2) expenses as provided in 2-18-501 and 2-18-502; and

(3) a salary equal to one-fourth the daily rate of a grade 8, step 1 classified state employee, for every 6 hours or fraction thereof spent away from home on committee business.

History: En. Sec. 1, Ch. 224, L. 1973; amd. Sec. 4, Ch. 103, L. 1977; R.C.M. 1947, 43-310.1.

5-2-303. Participation in state benefits group. Individual members of the senate and the house of representatives may enroll in the state employees benefits group during the terms to which they have been elected. The provider of benefits shall enroll and collect employee contributions directly from such legislators. The employer contribution shall be paid from funds appropriated for that purpose.

History: En. 43-310.3 by Sec. 12, Ch. 563, L. 1977; R.C.M. 1947, 43-310.3; amd. Sec. 12, Ch. 555, L. 1979.

5-2-304. Continued participation in public retirement systems. (1) The purpose of this section is to provide a means whereby persons serving in the Montana legislature may continue their participation in public retirement systems governed by state law. This section is not intended to provide duplicate credit for the same service in two retirement systems supported wholly or in part by public funds. This section does not affect contribution rates or benefit payments specifically provided for in the laws governing the operation of individual retirement systems.

(2) A person who is engaged in official duties as a member of the Montana legislature and who is otherwise eligible to participate as a member or contributor of a public retirement system governed by state law may but is not required to continue his participation in such public retirement system while engaged in his official duties as a legislator.

(3) A legislator who elects to continue participation as provided in subsection (2) shall:

(a) continue his payments into the fund of the retirement system at the rate currently in effect in such system based on his monthly salary as a member of that system; or

(b) continue his payments into the fund of the retirement system at the rate currently in effect in such system based on his monthly salary as a legislator.

(4) The state contribution shall be by legislative appropriation. It shall equal the appropriate employer contribution at the rate currently in effect in the system.

History: En. 43-310.2 by Sec. 1, Ch. 333, L. 1977; R.C.M. 1947, 43-310.2.

Part 4

Vacancies

5-2-401. Definitions. (1) For the purposes of this part, "vacancy" or "vacancies" has the same meaning as prescribed in 2-16-501.

(2) As used in 5-2-406, "term" means the 4-year period to which a senator is normally elected in the absence of a vacancy.

History: (1)En. Sec. 3, Ch. 179, L. 1967; Sec. 43-217, R.C.M. 1947; (2)En. Sec. 1, Ch. 179, L. 1967; amd. Sec. 2, Ch. 198, L. 1977; Sec. 43-215, R.C.M. 1947; R.C.M. 1947, 43-215(4)(a), 43-217.

5-2-402. Appointment by board of county commissioners. (1) When a vacancy occurs in the legislature, the vacancy shall be filled by appointment by the board of county commissioners or, in the event of a multicounty district, the boards of county commissioners comprising the district sitting as one appointing board.

(2) The chairman of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislature, and he shall act as the presiding officer of the meeting.

(3) The appointment of a legislator under this section must take place within 15 days after the vacancy occurs.

History: En. Sec. 1, Ch. 179, L. 1967; amd. Sec. 2, Ch. 198, L. 1977; R.C.M. 1947, 43-215(1), (2), (6).

5-2-403. Appointee to be of same political party. (1) Whenever his predecessor served as a member of a political party, the appointee named under 5-2-402 shall be a member of the same political party and shall be selected from a list of three individuals provided by the county central committees, acting together, of the counties wherein a portion of the senate district lies. Whenever the appointing board is unable to elect an appointee from the submitted list, it shall request a second list of three names from the county central committees. The second list may not contain any of the names submitted on the first list. The appointing board shall then select an appointee from the individuals named on both lists.

(2) The provisions of this section do not apply if his predecessor served as an independent.

History: En. Sec. 1, Ch. 179, L. 1967; amd. Sec. 2, Ch. 198, L. 1977; R.C.M. 1947, 43-215(5).

5-2-404. Procedure upon failure of one candidate to receive majority vote. In the event that a decision cannot be made by the appointing board because of failure of any candidate to receive a majority of the votes, the final decision may be made by lot from the first and second lists of candidates as provided by 5-2-403(1) or from a list of three individuals if the predecessor served as an independent, in accordance with rules of selection adopted by the appointing board.

History: En. Sec. 2, Ch. 179, L. 1967; amd. Sec. 3, Ch. 198, L. 1977; R.C.M. 1947, 43-216.

5-2-405. Term of appointee. (1) Whenever the vacancy occurs in the house of representatives, the appointee shall serve until the end of the term to which his predecessor was elected.

(2) Whenever the vacancy occurs in the senate, the appointee shall serve until a successor can be elected as provided in 5-2-406.

History: En. Sec. 1, Ch. 179, L. 1967; amd. Sec. 2, Ch. 198, L. 1977; R.C.M. 1947, 43-215(3).

5-2-406. Elections to fill vacancies in senate. (1) Whenever a vacancy occurs 50 days or more before the general election held during the second year of the term, an individual shall be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 50 days or more prior to the primary election during the second year, the same procedure as is used for senators who will be elected to full 4-year terms at that general election shall be utilized.

(b) Whenever the vacancy occurs on or after the 50th day prior to the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-10-327 and 13-38-204. A political party shall notify the secretary of state of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate shall be filed with the secretary of state on or before the 40th day prior to the general election.

(2) Whenever a vacancy occurs on or after the 50th day prior to the general election held during the second year of the term, the person appointed by the board under 5-2-402 shall serve until the end of the term.

History: En. Sec. 1, Ch. 179, L. 1967; amd. Sec. 2, Ch. 198, L. 1977; R.C.M. 1947, 43-215(4)(b), (4)(c); amd. Sec. 1, Ch. 526, L. 1979.

5-2-407. Anticipated vacancy. (1) Whenever it appears that a vacancy will exist in the legislature because of the inability of an elected legislator to take office at the commencement of the term to which he was elected, an appointee may be selected in advance of the commencement of the term under the provisions of 5-2-402 through 5-2-406.

(2) For purposes of determining the term of office of the appointee and the 15-day period of 5-2-402(3), the vacancy occurs on the first day of the term to which his predecessor was elected.

(3) An appointee under this section may take office only if the vacancy in fact exists at the commencement of the term of office.

History: En. 43-216.1 by Sec. 4, Ch. 198, L. 1977; R.C.M. 1947, 43-216.1.

CHAPTER 3

SPECIAL SESSIONS

Part 1 — Call of Special Session

Section
5-3-101. Convening of special session — limiting subjects.
5-3-102. Calling of a future special session when legislature is in session.
Sections 5-3-103 and 5-3-104 reserved.
5-3-105. Request by ten members to poll legislators.
5-3-106. Procedure for polling legislators.
5-3-107. Notice of time of approved special session.
5-3-108. Failure to approve special session — ballots void.

Part 1

Call of Special Session

5-3-101. Convening of special session — limiting subjects. The legislature may be convened in special session by the governor or at the written request of a majority of the members. The governor or the legislature may limit the special session to the subjects specified in the call.

History: En. Sec. 1, Ch. 433, L. 1973; R.C.M. 1947, 43-319.

5-3-102. Calling of a future special session when legislature is in session. When the legislature is in session, a majority of the members may by a written request call a special session to meet at a specified time.

History: En. Sec. 2, Ch. 433, L. 1973; R.C.M. 1947, 43-320.

5-3-103 and 5-3-104 reserved.

5-3-105. Request by ten members to poll legislators. (1) When the legislature is not in session, any 10 members may in writing request the secretary of state to poll the legislators to determine if a majority are in favor of a special session.

(2) The request must state:

(a) the conditions warranting the call of a special session;

(b) the purposes of the special session; and

(c) the proposed convening date and time of the special session.

History: En. Sec. 3, Ch. 433, L. 1973; R.C.M. 1947, 43-321.

5-3-106. Procedure for polling legislators. (1) Within 5 days after receiving a request, the secretary of state shall send to all legislators by certified mail a ballot which contains:

(a) the names of the legislators making the request;
(b) the reasons for calling the special session;
(c) the purposes of the special session;
(d) the requested convening date and time of the special session;
(e) the date by which legislators must return the ballot, which may not be more than 30 days after the date of the mailing of the ballots; and
(f) a stamped return envelope.

(2) The secretary of state shall keep the ballots secret until all legislators have voted or until the day after the date set for return of the ballots, whichever occurs first.

History: **En. Sec. 4, Ch. 433, L. 1973; amd. Sec. 1, Ch. 200, L. 1975; R.C.M. 1947, 43-322.**

5-3-107. Notice of time of approved special session. If a majority of the legislators reply affirmatively to the poll, the secretary of state shall notify each legislator of the time and day on which the special session shall convene.

History: **En. Sec. 6, Ch. 433, L. 1973; R.C.M. 1947, 43-324.**

5-3-108. Failure to approve special session — ballots void. If a majority of the legislators fail to approve the call for a special session within 30 days after the secretary of state mails the ballots or notifies each legislator, all ballots are void and may not be used again. The entire process must be repeated to call the legislature into special session.

History: **En. Sec. 7, Ch. 433, L. 1973; R.C.M. 1947, 43-325.**

CHAPTER 4

BILLS

Part 1 — General Provisions

Section
5-4-101. Form of enacting clause.
5-4-102. Limitation on title of referred legislation.

Part 2 — Fiscal Notes in Legislative Bills

5-4-201. Requirement of fiscal notes with committee reports.
5-4-202. Requests for notes by committee, house, or sponsor.
5-4-203. Budget director to prepare note.
5-4-204. Submission of fiscal note — distribution to legislators.
5-4-205. Contents of notes.
5-4-206. Background information to legislators on request.

Part 3 — Action by Governor on Bills

5-4-301. Bills received by the governor — how endorsed.
5-4-302. Approval of bills.
5-4-303. Line item veto.
5-4-304. Amendatory veto.
5-4-305. Bills returned without approval.
5-4-306. Return when legislature not in session.
5-4-307. Bills remaining with the governor.

Part 4 — Legislative History Act

5-4-401. Short title.

5-4-402. Purpose.
5-4-403. Definition of delegation of authority.
5-4-404. Statement of intent.

Part 1

General Provisions

5-4-101. Form of enacting clause. The enacting clause of every law shall be as follows: "Be it enacted by the Legislature of the State of Montana:".

History: En. Sec. 1, Ch. 7, L. 1974; R.C.M. 1947, 43-516.

5-4-102. Limitation on title of referred legislation. All bills referred by the legislature to a vote of the people shall have a title of no more than 100 words.

History: En. Sec. 17, Ch. 400, L. 1979.

Part 2

Fiscal Notes in Legislative Bills

5-4-201. Requirement of fiscal notes with committee reports. All bills reported out of a committee of the legislature having an effect on the revenues, expenditures, or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect. Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction.

History: En. Sec. 1, Ch. 53, L. 1965; R.C.M. 1947, 43-1001.

5-4-202. Requests for notes by committee, house, or sponsor. A fiscal note also may be requested on a bill, as the joint rules of the senate and the house of representatives may allow, by:

(1) a committee considering the bill;

(2) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or

(3) the sponsor, through the presiding officer.

History: En. Sec. 5, Ch. 53, L. 1965; amd. Sec. 1, Ch. 11, L. 1974; R.C.M. 1947, 43-1005.

5-4-203. Budget director to prepare note. The budget director, in cooperation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note and shall return same within 6 days. The director may request additional time to complete a note, which extension must be submitted to the presiding officer or committee requesting the note for approval.

History: En. Sec. 2, Ch. 53, L. 1965; amd. Sec. 1, Ch. 6, L. 1974; amd. Sec. 97, Ch. 326, L. 1974; amd. Sec. 1, Ch. 321, L. 1975; R.C.M. 1947, 43-1002.

5-4-204. Submission of fiscal note — distribution to legislators. A completed fiscal note shall be submitted by the budget director to the presiding officer who requested it, who shall refer it to the committee considering the bill. If the bill is printed, the note shall be reproduced and placed on the members' desks.

History: En. Sec. 3, Ch. 53, L. 1965; amd. Sec. 97, Ch. 326, L. 1974; amd. Sec. 2, Ch. 321, L. 1975; R.C.M. 1947, 43-1003.

5-4-205. Contents of notes. Fiscal notes shall, where possible, show in dollar amounts the estimated increase or decrease in revenues or expenditures, costs which may be absorbed without additional funds, and long-range financial implications. No comment or opinion relative to merits of the bill shall be included; however, technical or mechanical defects may be noted.

History: En. Sec. 4, Ch. 53, L. 1965; R.C.M. 1947, 43-1004.

5-4-206. Background information to legislators on request. The budget director shall make available on request to any member of the legislature all background information used in developing a fiscal note.

History: En. Sec. 6, Ch. 53, L. 1965; amd. Sec. 97, Ch. 326, L. 1974; amd. Sec. 3, Ch. 321, L. 1975; R.C.M. 1947, 43-1006.

Part 3

Action by Governor on Bills

5-4-301. Bills received by the governor — how endorsed. Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. Each bill must, as soon as delivered to the governor, be endorsed as follows: "This bill was received by the governor this .... day of ...., 19..". The endorsement must be signed by an assistant authorized by the governor or by the governor himself.

History: En. Sec. 270, Pol. C. 1895; re-en. Sec. 100, Rev. C. 1907; re-en. Sec. 84, R.C.M. 1921; Cal. Pol. C. Sec. 309; re-en. Sec. 84, R.C.M. 1935; amd. Sec. 1, Ch. 31, L. 1973; R.C.M. 1947, 43-501.

5-4-302. Approval of bills. When the governor approves a bill, he must set his name thereto with the date of his approval and deposit the same in the office of the secretary of state.

History: En. Sec. 271, Pol. C. 1895; re-en. Sec. 101, Rev. C. 1907; re-en. Sec. 85, R.C.M. 1921; Cal. Pol. C. Sec. 310; re-en. Sec. 85, R.C.M. 1935; amd. Sec. 1, Ch. 157, L. 1973; R.C.M. 1947, 43-502(1).

5-4-303. Line item veto. If any bill presented to the governor contains several distinct items of appropriation of money, he may disapprove one or more items while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects and his objections thereto. The governor must transmit to the house in which the bill originated (or to the secretary of state if the legislature is not in session) a copy of such statement, and the items so objected to must be separately reconsidered in the same manner as bills which have been disapproved by the governor.

History: En. Sec. 271, Pol. C. 1895; re-en. Sec. 101, Rev. C. 1907; re-en. Sec. 85, R.C.M. 1921; Cal. Pol. C. Sec. 310; re-en. Sec. 85, R.C.M. 1935; amd. Sec. 1, Ch. 157, L. 1973; R.C.M. 1947, 43-502(2).

5-4-304. Amendatory veto. The governor may return any bill to the originating house with his recommendations for amendment. Such house shall reconsider the bill under its rules relating to amendment offered in committee of the whole. The bill is then subject to the following procedures:

(1) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in committee of the whole, the bill and the originating house's approval or disapproval of the governor's recommendations.

(2) If both houses approve the governor's recommendations, the bill shall be returned to the governor for his reconsideration.

(3) If both houses disapprove the governor's recommendations, the bill shall be returned to the governor for his reconsideration.

(4) If one house disapproves the governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee:

(a) If both houses adopt a conference committee report, the bill in accordance with the report shall be returned to the governor for his reconsideration.

(b) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the governor's recommendations shall be considered not approved and the bill shall be returned to the governor for further consideration.

(5) The governor may not return the bill for amendment a second time.

History: En. Sec. 271, Pol. C. 1895; re-en. Sec. 101, Rev. C. 1907; re-en. Sec. 85, R.C.M. 1921; Cal. Pol. C. Sec. 310; re-en. Sec. 85, R.C.M. 1935; amd. Sec. 1, Ch. 157, L. 1973; R.C.M. 1947, 43-502(3).

5-4-305. Bills returned without approval. (1) A bill or item or items of an appropriations bill become law whenever:

(a) the bill passes both houses of the legislature;

(b) the bill is returned by the governor without his signature and with objections thereto or, if it is a bill containing several items of appropriation of money, with objections to one or more items; and

(c) upon reconsideration the bill or item or items pass both houses by the constitutional majority.

(2) The bill or item or items shall be authenticated by a certificate endorsed on or attached to the bill or the copy of the statement of objections. The form of the certificate shall be: "This bill having been returned by the governor with his objections thereto and, after reconsideration, having passed both houses by the constitutional majority has become a law this .... day of ...., A.D. ...." or "The following items in the within statement (naming them) having, after reconsideration, passed both houses by the constitutional majority have become a law this .... day of ...., A.D. ...". The endorsement, signed by the president of the senate and the speaker of the house, is sufficient authentication of the bill or item or items.

(3) The authenticated bill or statement shall be delivered to the governor, who shall deposit it with the laws in the office of the secretary of state.

History: En. Sec. 272, Pol. C. 1895; re-en. Sec. 102, Rev. C. 1907; re-en. Sec. 86, R.C.M. 1921; Cal. Pol. C. Sec. 311; re-en. Sec. 86, R.C.M. 1935; amd. Sec. 7, Ch. 309, L. 1977; R.C.M. 1947, 43-503.

5-4-306. Return when legislature not in session. (1) If, on the day the governor desires to return a bill without his approval and with his objections thereto to the house in which it originated, that house has adjourned for the day (but not for the session), he may deliver the bill with his message to the presiding officer, secretary, clerk, or any member of such house. Such delivery is as effectual as though returned in open session if the governor, on the first day the house is again in session, by message, notifies it of such delivery and of the time when and the person to whom such delivery was made.

(2) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons for the veto to the secretary of state. The secretary of state shall immediately mail a copy of the bill and the veto message to each member of the legislature.

(3) The legislature may reconvene to reconsider any bill so vetoed by using the statutory procedure provided for convening in special session.

History: En. Sec. 273, Pol. C. 1895; re-en. Sec. 103, Rev. C. 1907; re-en. Sec. 87, R.C.M. 1921; Cal. Pol. C. Sec. 312; re-en. Sec. 87, R.C.M. 1935; amd. Sec. 1, Ch. 63, L. 1973; R.C.M. 1947, 43-504.

5-4-307. Bills remaining with the governor. (1) A bill which has passed both houses of the legislature and has not been returned by the governor within 5 days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned becomes law.

(2) The governor shall deliver the bill to the secretary of state and direct him to authenticate it by a certificate endorsed or attached thereon. The form of the certificate shall be: "This bill having remained with the governor 5 days, and the legislature being in session, it has become a law this .... day of ...., ..." or "This bill having remained with the governor 25 days, and the legislature being adjourned, it has become a law this .... day of ...., ...". The certificate shall be signed by the secretary of state and deposited with the laws in his office.

History: En. Sec. 274, Pol. C. 1895; re-en. Sec. 104, Rev. C. 1907; re-en. Sec. 88, R.C.M. 1921; Cal. Pol. C. Sec. 313; re-en. Sec. 88, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1973; amd. Sec. 8, Ch. 309, L. 1977; R.C.M. 1947, 43-505.

Part 4

Legislative History Act

5-4-401. Short title. This part may be cited as the "Legislative History Act".

History: En. 43-519 by Sec. 1, Ch. 560, L. 1977; R.C.M. 1947, 43-519.

5-4-402. Purpose. The legislature finds that it must accept the ultimate responsibility for the increase in the discretionary authority of state executive branch agencies, as evidenced by proliferating rules, forms, orders, and licensing proceedings before state agencies. The purpose of this Legislative History Act is to assure that statutes henceforth enacted to grant additional discretionary authority to state agencies are accompanied by a clear indication of the legislature's intent as to how such discretion is to be exercised and the legislature's purpose for delegating the authority.

History: **En. 43-520 by Sec. 2, Ch. 560, L. 1977; R.C.M. 1947, 43-520.**

5-4-403. Definition of delegation of authority. As used in 5-4-404, "delegation of authority" means a statutory authorization to:

(1) adopt rules implementing a statute; or

(2) license, as defined in 2-4-102, an activity or establishment regulated by statute.

History: **En. 43-521 by Sec. 3, Ch. 560, L. 1977; R.C.M. 1947, 43-521.**

5-4-404. Statement of intent. The legislature by its joint rules shall provide a procedure by which a statement of legislative intent shall be included with each bill containing a delegation of authority and may be included with all bills. A statement of intent shall be placed before each component of the legislature which sequentially considers the subject bill and may be amended in the same manner as the bill.

History: **En. 43-522 by Sec. 4, Ch. 560, L. 1977; R.C.M. 1947, 43-522.**

CHAPTER 5

LEGISLATIVE PROCEDURES

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Part 1

Witnesses Before Legislature

5-5-101. Subpoenas. (1) A subpoena requiring the attendance of any witness before either house of the legislature or a committee thereof may be issued by the president of the senate, speaker of the house, or the chairman of any committee before whom the attendance of the witness is desired.

(2) It is sufficient if:

(a) it states whether the proceeding is before the house of representatives, the senate, or a committee;

(b) it is addressed to the witness;

(c) it requires the attendance of such witness at a time and place certain;

(d) it is signed by the president of the senate, speaker of the house, or chairman of a committee.

History: En. Sec. 260, Pol. C. 1895; re-en. Sec. 95, Rev. C. 1907; re-en. Sec. 79, R.C.M. 1921; Cal. Pol. C. Sec. 300; re-en. Sec. 79, R.C.M. 1935; R.C.M. 1947, 43-401.

5-5-102. Service of subpoenas. The subpoena may be served by any elector of the state, and his affidavit that he delivered a copy to the witness is evidence of service.

History: En. Sec. 261, Pol. C. 1895; re-en. Sec. 96, Rev. C. 1907; re-en. Sec. 80, R.C.M. 1921; Cal. Pol. C. Sec. 301; re-en. Sec. 80, R.C.M. 1935; R.C.M. 1947, 43-402.

5-5-103. Contempt. If any witness neglects or refuses to obey such subpoena or, appearing, neglects or refuses to testify, the senate or house may, by resolution entered on the journal, commit him for contempt.

History: En. Sec. 262, Pol. C. 1895; re-en. Sec. 97, Rev. C. 1907; re-en. Sec. 81, R.C.M. 1921; Cal. Pol. C. Sec. 302; re-en. Sec. 81, R.C.M. 1935; R.C.M. 1947, 43-403.

5-5-104. Compelling attendance. Any witness neglecting or refusing to attend in obedience to a subpoena may be arrested by the sergeant-at-arms and brought before the senate or house. The only warrant of authority necessary to authorize the arrest is a copy of a resolution of the senate or house, signed by the president of the senate or speaker of the house and countersigned by the secretary or clerk.

History: En. Sec. 263, Pol. C. 1895; re-en. Sec. 98, Rev. C. 1907; re-en. Sec. 82, R.C.M. 1921; Cal. Pol. C. Sec. 303; re-en. Sec. 82, R.C.M. 1935; amd. Sec. 6, Ch. 309, L. 1977; R.C.M. 1947, 43-404.

5-5-105. Immunity of witness. (1) No person sworn and examined before either house of the legislature or any committee thereof can be held to answer criminally or be subject to any penalty or forfeiture for any fact or act touching which he is required to testify. No statement made or paper produced by any such witness is competent evidence in any criminal proceeding against such witness.

(2) Such witness cannot refuse to testify to any fact or to produce any paper touching which he is examined for the reason that his testimony or the production of such paper tends to disgrace him or render him infamous.

(3) Nothing in this section exempts any witness from prosecution and punishment for perjury committed by him on such examination.

History: En. Sec. 264, Pol. C. 1895; re-en. Sec. 99, Rev. C. 1907; re-en. Sec. 83, R.C.M. 1921; Cal. Pol. C. Sec. 304; re-en. Sec. 83, R.C.M. 1935; R.C.M. 1947, 43-405.

Part 2

Committees

5-5-201. Power to administer oaths. The members of any committee may administer oaths to witnesses in any matter under examination.

History: En. Secs. 4 and 5, p. 170, L. 1891; re-en. Sec. 200, Pol. C. 1895; re-en. Sec. 67, Rev. C. 1907; re-en. Sec. 65, R.C.M. 1921; Cal. Pol. C. Sec. 252; re-en. Sec. 65, R.C.M. 1935; R.C.M. 1947, 43-301(part).

5-5-202. Interim activities of committees. During an interim when the legislature is not in session, all regularly appointed standing or select committees of either house not formally discharged prior to the final adjournment of the preceding session shall continue as such committees. They are empowered to continue to sit as such committees as provided in this title.

History: En. Sec. 10, Ch. 431, L. 1973; R.C.M. 1947, 43-718; amd. Sec. 1, Ch. 138, L. 1979.

5-5-203 through 5-5-210 reserved.

5-5-211. Appointment and composition of joint subcommittees. Joint subcommittee members shall be appointed by the legislative council. The chairmen of the appropriate standing committees in each body shall recommend suggested members to serve on each subcommittee. The legislative council shall consider the recommendations, but is not bound thereby. No legislator shall serve on more than two interim joint subcommittees. The composition of each subcommittee shall be as follows:

(1) four members of the house, no more than two of whom may be of one political party; and

(2) four members of the senate, no more than two of whom may be of one political party.

History: En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(1); amd. Sec. 1, Ch. 596, L. 1979.

Compiler's Comments

Effective date. Sec. 6, Ch. 596, L. 1979, provided: "This act is effective on passage and approval." Approved April 18, 1979.

5-5-212. Implied resignation of subcommittee member — vacancies. If a subcommittee member misses more than two committee meetings or hearings without just cause when the legislature is not in session, the member is considered to have resigned and the vacancy shall be filled in the same manner as the original appointment. Any other vacancy shall be filled in the same manner.

History: En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(6).

5-5-213. Officers of subcommittees. Each subcommittee shall elect its chairman and vice-chairman from among its members. The chairman and vice-chairman may not be members of the same political party.

History: En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(2).

5-5-214. Interim activity. The subcommittees may perform their functions when the legislature is not in session. The personnel, data, and facilities of the legislative council shall be made available to such subcommittees.

History: En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(3).

5-5-215. Duties of subcommittees. (1) Each subcommittee shall accumulate, compile, analyze, and furnish such information relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to important issues of policy and questions of statewide importance, including but not limited to:

(a) the possibilities of consolidations of departments, commissions, boards, and institutions in state government for:

(i) the elimination of unnecessary activities and duplications in office personnel and equipment;

(ii) the coordination of activities;

(iii) the purpose of increasing efficiency of service or effecting economies; and

(iv) the purpose of studying and inquiring into the financial administration of state governments and subdivisions thereof, including the problems of assessment and collection of taxes; and

(b) all other matters pertaining to the function of the departments and branches of state government.

(2) Each subcommittee shall prepare such bills and resolutions as, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.

(3) Each subcommittee shall keep accurate records of its activities and proceedings.

History: En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(4).

5-5-216. Recommendations of subcommittees. A subcommittee appointed for the purpose of making a study designated by the legislative council may make recommendations for legislation. These recommendations and the study report shall be submitted to the legislature at the next regular session.

History: En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(5); amd. Sec. 2, Ch. 596, L. 1979.

5-5-217. Selection and assignment of interim studies. (1) Immediately following adjournment sine die, the legislative council shall prepare a list of study requests adopted. A copy of the list shall be distributed to each legislator with a request that the legislator rank the study requests in the order of importance he ascribes to them. The lists, with the priorities assigned, shall be returned to the legislative council.

(2) The legislative council shall review the priority lists returned by legislators, review estimated costs and staff assistance associated with the requested studies, and designate those studies to be assigned. In designating studies, the legislative council may combine requests as one study when the subject matter of those requests is closely related. The legislative council shall group related studies together and shall designate the number of committees to be appointed.

(3) The legislative council shall inform the chairmen of the appropriate standing committees in each body of those studies that have been selected. Following receipt of the recommendations from the standing committee chairmen, the legislative council shall then proceed under 5-5-211 to appoint the subcommittees.

History: En. Sec. 4, Ch. 596, L. 1979.

Compiler's Comments

Effective date. Sec. 6, Ch. 596, L. 1979, provided: "This act is effective on passage and approval." Approved April 18, 1979.

5-5-218 through 5-5-220 reserved.

5-5-221 and 5-5-222. Repealed. Sec. 5, Ch. 596, L. 1979.

Part 3

Appointments by Governor

5-5-301. Governor to transmit list of appointments to legislature. Within 10 days after the meeting of the legislature, the governor must transmit to it a list of all appointments made by him, under the provisions of 2-16-506, during the recess of the legislature.

History: En. Sec. 371, Pol. C. 1895; re-en. Sec. 146, Rev. C. 1907; re-en. Sec. 125, R.C.M. 1921; Cal. Pol. C. Sec. 381; re-en. Sec. 125, R.C.M. 1935; R.C.M. 1947, 82-1302.

5-5-302. Nominations to senate to be in writing. Nominations made by the governor to the senate must be in writing, designating the residence of the nominee and the office for which he is nominated.

History: En. Sec. 1000, Pol. C. 1895; re-en. Sec. 356, Rev. C. 1907; re-en. Sec. 424, R.C.M. 1921; Cal. Pol. C. Sec. 889; re-en. Sec. 424, R.C.M. 1935; R.C.M. 1947, 59-407.

5-5-303. Resolution of concurrence. Whenever the senate concurs in a nomination, its secretary must immediately deliver a copy of the resolution of concurrence, certified by the president and secretary, to the secretary of state and another copy, certified by the secretary, to the governor.

History: En. Sec. 1001, Pol. C. 1895; re-en. Sec. 357, Rev. C. 1907; re-en. Sec. 425, R.C.M. 1921; Cal. Pol. C. Sec. 890; re-en. Sec. 425, R.C.M. 1935; R.C.M. 1947, 59-408.

Part 4

Impeachment

5-5-401. Officers liable to impeachment. The governor, executive officers, heads of state departments, and judicial officers are liable to impeachment for felonies and misdemeanors or malfeasance in office.

History: Our present impeachment laws are substantially the same as the territorial acts which provided for trial by the council. See Secs. 41-62, pp. 196-199, Cod. Stat. 1871; re-en. as Secs. 41-62, 3d Div. Rev. Stat. 1879; re-en. as Secs. 41-63, 3d Div. Comp. Stat. 1887; re-en. Sec. 1500, Pen. C. 1895; re-en. Sec. 8972, Rev. C. 1907; re-en. Sec. 11668, R.C.M. 1921; Cal. Pen. C. Sec. 737; re-en. Sec. 11668, R.C.M. 1935; Sec. 94-5401, R.C.M. 1947; amd. Sec. 2, Ch. 5, L. 1973; redes. 95-2801 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 29, Ch. 309, L. 1977; R.C.M. 1947, 95-2801.

5-5-402. Sole power of impeachment. The sole power of impeachment vests in the house of representatives, the concurrence of two-thirds of all the members being necessary to the exercise thereof.

History: En. Sec. 1501, Pen. C. 1895; re-en. Sec. 8973, Rev. C. 1907; re-en. Sec. 11669, R.C.M. 1921; re-en. Sec. 11669, R.C.M. 1935; Sec. 94-5402, R.C.M. 1947; amd. Sec. 1, Ch. 10, L. 1973; redes. 95-2802 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2802(part).

5-5-403. Trial of impeachments. (1) Impeachment shall be tried by the senate, the court of impeachment, sitting for that purpose. The senators shall be upon oath or affirmation to do justice according to law and evidence.

(2) The court has jurisdiction to try impeachments presented by the house of representatives.

History: (1)Ap. p. Sec. 1501, Pen. C. 1895; re-en. Sec. 8973, Rev. C. 1907; re-en. Sec. 11669, R.C.M. 1921; re-en. Sec. 11669, R.C.M. 1935; Sec. 94-5402, R.C.M. 1947; amd. Sec. 1, Ch. 10, L. 1973; redes. 95-2802 by Sec. 29, Ch. 513, L. 1973; Sec. 95-2802, R.C.M. 1947; Ap. p. Sec. 6, C. Civ. Proc. 1895; re-en. Sec. 6240, Rev. C. 1907; re-en. Sec. 8786, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 36; re-en. Sec. 8786, R.C.M. 1935; Sec. 93-103, R.C.M. 1947; (2)En. Sec. 7, C. Civ. Proc. 1895; re-en. Sec. 6241, Rev. C. 1907; re-en. Sec. 8787, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 37; re-en. Sec. 8787, R.C.M. 1935; amd. Sec. 1, Ch. 5, L. 1973; amd. Sec. 28, Ch. 309, L. 1977; Sec. 93-104, R.C.M. 1947; R.C.M. 1947, 93-103, 93-104, 95-2802(part).

5-5-404. Officers of the court. (1) The officers of the senate are officers of the court.

(2) When the governor or lieutenant governor is on trial, the chief justice of the supreme court shall preside.

History: (1)En. Sec. 8, C. Civ. Proc. 1895; re-en. Sec. 6242, Rev. C. 1907; re-en. Sec. 8788, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 38; Sec. 93-105, R.C.M. 1947; (2)En. Sec. 1501, Pen. C. 1895; re-en. Sec. 8973, Rev. C. 1907; re-en. Sec. 11669, R.C.M. 1921; re-en. Sec. 11669, R.C.M. 1935; Sec.

94-5402, R.C.M. 1947; amd. Sec. 1, Ch. 10, L. 1973; redes. 95-2802 by Sec. 29, Ch. 513, L. 1973; Sec. 95-2802, R.C.M. 1947; R.C.M. 1947, 93-105, 95-2802(part).

5-5-405 through 5-5-410 reserved.

5-5-411. Articles of impeachment. (1) All impeachments must be by resolution originated in and adopted by the house of representatives. The resolution shall be conducted through the house by managers elected by the house.

(2) The managers shall prepare articles of impeachment, present them at the bar of the senate, and prosecute them.

History: En. Sec. 1502, Pen. C. 1895; re-en. Sec. 8974, Rev. C. 1907; re-en. Sec. 11670, R.C.M. 1921; Cal. Pen. C. Sec. 738; re-en. Sec. 11670, R.C.M. 1935; Sec. 94-5403, R.C.M. 1947; redes. 95-2803 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 30, Ch. 309, L. 1977; R.C.M. 1947, 95-2803.

5-5-412. Delivery of articles to senate. When an officer is impeached by the house of representatives, the articles of impeachment must be delivered to the president of the senate.

History: En. Sec. 1503, Pen. C. 1895; re-en. Sec. 8975, Rev. C. 1907; re-en. Sec. 11671, R.C.M. 1921; Cal. Pen. C. Sec. 739; re-en. Sec. 11671, R.C.M. 1935; Sec. 94-5404, R.C.M. 1947; redes. 95-2804 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2804.

5-5-413. Suspension pending trial — filling vacancy. (1) Whenever articles of impeachment against any officer subject to impeachment are presented to the senate, such officer is temporarily suspended from his office and cannot act in his official capacity until he is acquitted.

(2) Upon such suspension of any officer other than the governor, his office must be at once temporarily filled by an appointment made by the governor, with the advice and consent of the senate. The term of the appointment is until the acquittal of the party impeached or, in case of his removal, until the vacancy is filled at the next election as required by law.

History: En. Sec. 1516, Pen. C. 1895; re-en. Sec. 8988, Rev. C. 1907; re-en. Sec. 11684, R.C.M. 1921; Cal. Pen. C. Sec. 751; re-en. Sec. 11684, R.C.M. 1935; Sec. 94-5417, R.C.M. 1947; redes. 95-2817 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2817.

5-5-414. Time of hearing — service of defendant. (1) The senate must assign a day for the hearing of the impeachment and inform the house of representatives thereof.

(2) The president of the senate must cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed, to be served on the defendant not less than 10 days before the day fixed for the hearing.

History: En. Sec. 1504, Pen. C. 1895; re-en. Sec. 8976, Rev. C. 1907; re-en. Sec. 11672, R.C.M. 1921; Cal. Pen. C. Sec. 740; re-en. Sec. 11672, R.C.M. 1935; Sec. 94-5405, R.C.M. 1947; redes. 95-2805 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2805.

5-5-415. Service — how made. The service must be made upon the defendant personally or, if he cannot upon diligent inquiry be found within the state, the senate, upon proof of that fact, may order publication to be made, in such manner as it may deem proper, of a notice requiring him to appear at a specified time and place and answer the articles of impeachment.

History: En. Sec. 1505, Pen. C. 1895; re-en. Sec. 8977, Rev. C. 1907; re-en. Sec. 11673, R.C.M. 1921; Cal. Pen. C. Sec. 741; re-en. Sec. 11673, R.C.M. 1935; Sec. 94-5406, R.C.M. 1947; redes. 95-2806 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2806.

5-5-416. Senate to be sworn. (1) At the time and place appointed and before the senate proceeds to act on the impeachment, the secretary must administer to the president of the senate, and the president of the senate to each of the members of the senate then present, an oath truly and impartially to hear, try, and determine the impeachment.

(2) No member of the senate can act or vote upon the impeachment or upon any question arising thereon without having taken such oath.

History: En. Sec. 1510, Pen. C. 1895; re-en. Sec. 8982, Rev. C. 1907; re-en. Sec. 11678, R.C.M. 1921; Cal. Pen. C. Sec. 745; re-en. Sec. 11678, R.C.M. 1935; Sec. 94-5411, R.C.M. 1947; redes. 95-2811 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2811.

5-5-417. Proceedings on failure to appear. If the defendant does not appear, the senate, upon proof of service or publication as provided in 5-5-414 and 5-5-415, may of its own motion or for cause shown assign another day for hearing the impeachment or may proceed in the absence of the defendant to trial and judgment.

History: En. Sec. 1506, Pen. C. 1895; re-en. Sec. 8978, Rev. C. 1907; re-en. Sec. 11674 R.C.M. 1921; Cal. Pen. C. Sec. 742; re-en. Sec. 11674, R.C.M. 1935; Sec. 94-5407, R.C.M. 1947; redes. 95-2807 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2807.

5-5-418. Counsel may be appointed. (1) If the defendant appears and is unable to procure the assistance of counsel, it is the duty of the president of the senate to appoint some suitable person to assist him in his defense.

(2) If the defendant is served by publication and fails to appear, it is the duty of the president of the senate to appoint some person or counsel to appear in his behalf and make defense for him.

History: En. Sec. 1507, Pen. C. 1895; re-en. Sec. 8979, Rev. C. 1907; re-en. Sec. 11675, R.C.M. 1921; re-en. Sec. 11675, R.C.M. 1935; Sec. 94-5408, R.C.M. 1947; redes. 95-2808 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2808.

5-5-419. Defendant's objection or answer. When the defendant appears, he may in writing object to the sufficiency of the articles of impeachment or he may answer the same by an oral plea of not guilty. The plea must be entered upon the journal and must put in issue every material allegation of the articles of impeachment.

History: En. Sec. 1508, Pen. C. 1895; re-en. Sec. 8980, Rev. C. 1907; re-en. Sec. 11676, R.C.M. 1921; Cal. Pen. C. Sec. 743; re-en. Sec. 11676, R.C.M. 1935; Sec. 94-5409, R.C.M. 1947; redes. 95-2809 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2809.

5-5-420. Overrule of objection — defendant's plea. If the objection to the sufficiency of the articles of impeachment is not sustained by a majority of the members of the senate, the defendant must be ordered forthwith to answer the articles of impeachment. If he then pleads guilty, the senate must render judgment of conviction against him. If he pleads not guilty or refuses to plead, the senate must, at such time as it may appoint, proceed to try the impeachment.

History: En. Sec. 1509, Pen. C. 1895; re-en. Sec. 8981, Rev. C. 1907; re-en. Sec. 11677, R.C.M. 1921; Cal. Pen. C. Sec. 744; re-en. Sec. 11677, R.C.M. 1935; Sec. 94-5410, R.C.M. 1947; redes. 95-2810 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2810.

5-5-421. Two-thirds vote necessary to a conviction. The defendant cannot be convicted on impeachment without the concurrence of two-thirds of the members elected, voting by ayes and noes. If two-thirds of the members elected do not concur in a conviction, he must be acquitted.

History: En. Sec. 1511, Pen. C. 1895; re-en. Sec. 8983, Rev. C. 1907; re-en. Sec. 11679, R.C.M. 1921; Cal. Pen. C. Sec. 746; re-en. Sec. 11679, R.C.M. 1935; Sec. 94-5412, R.C.M. 1947; redes. 95-2812 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2812.

5-5-422. Judgment on conviction — how pronounced. After conviction the senate must, at such time as it may appoint, pronounce judgment in the form of a resolution entered upon the journals of the senate.

History: En. Sec. 1512, Pen. C. 1895; re-en. Sec. 8984, Rev. C. 1907; re-en. Sec. 11680, R.C.M. 1921; Cal. Pen. C. Sec. 747; re-en. Sec. 11680, R.C.M. 1935; Sec. 94-5413, R.C.M. 1947; redes. 95-2813 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2813.

5-5-423. Judgment on conviction — how finalized. On the adoption of the resolution by a majority of the members present who voted on the question of acquittal or conviction, it becomes the judgment of the senate.

History: En. Sec. 1513, Pen. C. 1895; re-en. Sec. 8985, Rev. C. 1907; re-en. Sec. 11681, R.C.M. 1921; Cal. Pen. C. Sec. 748; re-en. Sec. 11681, R.C.M. 1935; Sec. 94-5414, R.C.M. 1947; redes. 95-2814 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2814.

5-5-424 through 5-5-430 reserved.

5-5-431. Nature of the judgment. The judgment may be that the defendant be suspended or that he be removed from office and disqualified to hold any office of honor, trust, or profit under the state.

History: En. Sec. 1514, Pen. C. 1895; re-en. Sec. 8986, Rev. C. 1907; re-en. Sec. 11682, R.C.M. 1921; Cal. Pen. C. Sec. 749; re-en. Sec. 11682, R.C.M. 1935; Sec. 94-5415, R.C.M. 1947; redes. 95-2815 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2815.

5-5-432. Effect of judgment of suspension. If judgment of suspension is given, the defendant, during the continuance thereof, is disqualified from receiving the salary, fees, or emoluments of the office.

History: En. Sec. 1515, Pen. C. 1895; re-en. Sec. 8987, Rev. C. 1907; re-en. Sec. 11683, R.C.M. 1921; Cal. Pen. C. Sec. 750; re-en. Sec. 11683, R.c.M. 1935; Sec. 94-5416, R.C.M. 1947; redes. 95-2816 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2816.

5-5-433. Criminal prosecution not barred. If the offense for which the defendant is convicted on impeachment is also the subject of an indictment or information, the indictment or information is not barred thereby.

History: En. Sec. 1518, Pen. C. 1895; re-en. Sec. 8990, Rev. C. 1907; re-en. Sec. 11686, R.C.M. 1921; Cal. Pen. C. Sec. 753; re-en. Sec. 11686, R.C.M. 1935; Sec. 94-5419, R.C.M. 1947; redes. 95-2819 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2819.

CHAPTER 6

LEGISLATIVE INTERNS

Part 1 — Legislative Intern Program

Section

5-6-101. Short title.
5-6-102. Establishment of program.
5-6-103. Term of service.
5-6-104. Number of interns — where from.
5-6-105. Selection by schools.
5-6-106. Intern qualifications.
5-6-107. Assignment of interns.
5-6-108. Legislative council to establish guidelines.
5-6-109. Interns responsible to sponsor.

5-6-110. Program not mandatory.
5-6-111. Funding not obligatory.

Part 1

Legislative Intern Program

5-6-101. Short title. This chapter shall be known as the "Legislative Intern Act of 1974".

History: En. 43-720 by Sec. 1, Ch. 305, L. 1974; R.C.M. 1947, 43-720.

5-6-102. Establishment of program. It is the public policy of this state that there be a legislative intern program open to students attending the university of Montana, Montana state university, eastern Montana college, northern Montana college, western Montana college, and the Montana college of mineral science and technology. Any private college of higher education in the state may also establish an intern program for the purposes of this chapter.

History: En. 43-721 by Sec. 2, Ch. 305, L. 1974; amd. Sec. 17, Ch. 309, L. 1977; R.C.M. 1947, 43-721.

5-6-103. Term of service. Each legislative intern shall serve for 10 weeks during the regular session of the legislature.

History: En. 43-722 by Sec. 3, Ch. 305, L. 1974; R.C.M. 1947, 43-722.

5-6-104. Number of interns — where from. All institutions referred to in 5-6-102 may have at least one intern. An additional five positions may be chosen from applications submitted to the legislative council.

History: En. 43-723 by Sec. 4, Ch. 305, L. 1974; R.C.M. 1947, 43-723.

5-6-105. Selection by schools. The legislative interns shall be named by the presidents of the several colleges and universities. The students so selected may be enrolled in any program offered by the college or university.

History: En. 43-724 by Sec. 5, Ch. 305, L. 1974; R.C.M. 1947, 43-724.

5-6-106. Intern qualifications. (1) The legislative interns must have the following qualifications:

(a) at least one quarter of "state government" or its equivalent as a course of study at an institution of higher learning;

(b) attainment of at least the level of a junior at an institution of higher learning; and

(c) the necessary degree of scholastic achievement, leadership, and involvement in community affairs.

(2) Preference shall be given to Montana high school graduates.

History: En. 43-725 by Sec. 6, Ch. 305, L. 1974; amd. Sec. 18, Ch. 309, L. 1977; R.C.M. 1947, 43-725.

5-6-107. Assignment of interns. Each legislative intern is assigned to a legislator by the legislative council.

History: En. 43-726 by Sec. 7, Ch. 305, L. 1974; R.C.M. 1947, 43-726.

5-6-108. Legislative council to establish guidelines. Each legislative intern is subject to guidelines established by the legislative council.
History: **En. 43-727 by Sec. 8, Ch. 305, L. 1974; R.C.M. 1947, 43-727.**

5-6-109. Interns responsible to sponsor. Each legislative intern is directly responsible to his or her legislator.
History: **En. 43-728 by Sec. 9, Ch. 305, L. 1974; R.C.M. 1947, 43-728.**

5-6-110. Program not mandatory. An institution of higher learning may choose not to participate in the legislative intern program.
History: **En. 43-729 by Sec. 10, Ch. 305, L. 1974; R.C.M. 1947, 43-729.**

5-6-111. Funding not obligatory. The legislature shall not, under any condition, because of this chapter be obligated to fund this internship program.
History: **En. 43-730 by Sec. 12, Ch. 305, L. 1974; R.C.M. 1947, 43-730.**

CHAPTER 7

LOBBYING

Part 1 — Licenses

Section
5-7-101. Purposes of chapter.
5-7-102. Definitions.
5-7-103. Licenses — fees — eligibility.
5-7-104. Suspension or revocation of license.
5-7-105. Suspension of lobbying privileges.

Part 2 — Registration and Reports

5-7-201. Docket — contents.
5-7-202. Docket — public record.
5-7-203. Principal — name of lobbyist on docket.
5-7-204. Updating docket.
5-7-205. Written authorization of lobbyist.
5-7-206. Copies of statements, arguments, and briefs.
5-7-207. Report to legislature.

Part 3 — Prohibitions—Applicability

5-7-301. Prohibition of practice without license and registration.
5-7-302. Prohibited compensation.
5-7-303. Restrictions — applicability.
5-7-304. Exemption from license and registration requirement.
5-7-305. Penalty.

Part 1

Licenses

5-7-101. Purposes of chapter. The purposes of this chapter are to promote a high standard of ethics in the practice of lobbying, to prevent unfair and unethical lobbying practices, and to provide for the licensing of lobbyists and the suspension or revocation of the licenses.

History: **En. Sec. 1, Ch. 157, L. 1959; amd. Sec. 19, Ch. 309, L. 1977; R.C.M. 1947, 43-801.**

5-7-102. Definitions. The following words and phrases shall have the meanings respectively ascribed to them:

(1) "Lobbying" means the practice of promoting or opposing the introduction or enactment of legislation before the legislature or the members thereof by any person other than a member of the legislature or a public official acting in his official capacity.

(2) "Lobbyist" means any person who engages in the practice of lobbying for hire except in the manner authorized by 5-7-304. Lobbying for hire shall include activities of any officers, agents, attorneys, or employees of any principal who are paid a regular salary or retained by such principal and whose duties include lobbying. When a person is reimbursed only for his personal living and travel expenses, he shall not be considered to be lobbying for hire. Nothing in this section shall be construed to deprive any citizen not lobbying for hire of his constitutional right to communicate with members of the legislature.

(3) "Unprofessional conduct" means:

(a) a violation of any of the provisions of this chapter;

(b) soliciting employment from any principal;

(c) instigating the introduction of legislation for the purpose of obtaining employment in opposition thereto;

(d) attempting to influence the vote of legislators on any measure pending or to be proposed by the promise of support or opposition at any future election, by any means other than argument on the merits thereof, or by making public any unsubstantiated charges of improper conduct on the part of any other lobbyist or of any legislator; or

(e) engaging in practices which reflect discredit on the practice of lobbying or the legislature.

(4) "Principal" means:

(a) any person, corporation, or association which engages a lobbyist or other person in connection with any legislation pending before the legislature or to be proposed affecting the pecuniary interest of such person, corporation, or association; or

(b) any board, department, commission, or other agency of the state, any county, or municipal corporation which engages a lobbyist or other person in connection with any legislation pending or to be proposed affecting the statutory powers, duties, or appropriation of such agency, county, or municipal corporation.

(5) "Docket" means the register of licensed lobbyists maintained by the secretary of state pursuant to 5-7-201.

(6) "Pecuniary interest" includes without limitation any legislation which creates, alters, or repeals any statutory charge by way of tax, license fee, registration fee, or otherwise; which creates, alters, or repeals any statutory privilege, power, restriction, or obligation of any principal; or which creates, alters, or repeals the powers or duties of any court or governmental agency before which the principal does business.

History: **En. Sec. 2, Ch. 157, L. 1959; R.C.M. 1947, 43-802.**

5-7-103. Licenses — fees — eligibility. (1) Any adult of good moral character who is a citizen of the United States and who is otherwise qualified under this chapter may be licensed as a lobbyist. The secretary of state shall provide a license application form. The application form may be obtained in the office of the secretary of state and filed therein. Upon approval of the application by the secretary of state and payment of the license fee of $10 to the secretary of state, a license shall be issued which entitles the licensee to practice lobbying on behalf of one or more principals. Each license shall expire on December 31 of each odd-numbered year.

(2) No application may be disapproved without affording the applicant a hearing. The hearing shall be held and the decision entered within 10 days of the date of the filing of the application.

(3) The license fees collected by the secretary of state under this chapter shall be deposited by him in the state treasury.

History: **En. Sec. 3, Ch. 157, L. 1959; amd. Sec. 3, Ch. 248, L. 1965; amd. Sec. 20, Ch. 309, L. 1977; R.C.M. 1947, 43-803(1).**

5-7-104. Suspension or revocation of license. (1) Upon a verified complaint in writing to the attorney general charging the holder of a license with unprofessional conduct or with having procured his license by fraud or perjury or through error, the attorney general may bring a civil action in the district court for Lewis and Clark County against the holder and in the name of the state as plaintiff to revoke or suspend the license.

(2) Hearing shall be held by the court unless the defendant-licensee demands a jury trial. The trial shall be held as soon as possible and at least 20 days after the filing of the charges and shall take precedence over all other matters pending before the court.

(3) If the court finds for the plaintiff, judgment shall be rendered revoking or suspending the license and the clerk of the court shall file a certified copy of the judgment with the secretary of state.

(4) The secretary of state may commence such an action on his own motion.

History: **En. Sec. 3, Ch. 157, L. 1959; amd. Sec. 3, Ch. 248, L. 1965; amd. Sec. 20, Ch. 309, L. 1977; R.C.M. 1947, 43-803(2).**

5-7-105. Suspension of lobbying privileges. No lobbyist whose license has been suspended or revoked and no person who has been convicted of a violation of any provision of this chapter may engage in lobbying until he has been reinstated to the practice of lobbying and duly licensed.

History: **En. Sec. 3, Ch. 157, L. 1959; amd. Sec. 3, Ch. 248, L. 1965; amd. Sec. 20, Ch. 309, L. 1977; R.C.M. 1947, 43-803(3).**

Part 2

Registration and Reports

5-7-201. Docket — contents. The secretary of state shall prepare and keep a docket in which shall be entered the name and business address of each lobbyist, the name and business address of his principal, and the subject or subjects of legislation to which the employment relates or a statement that the employment relates to all matters in which the principal has an interest.

History: **En. Sec. 5, Ch. 157, L. 1959; R.C.M. 1947, 43-805(part).**

5-7-202. Docket — public record. Such docket shall be a public record and open to the inspection of any citizen upon demand at any time during the regular business hours of the office of the secretary of state.

History: En. Sec. 5, Ch. 157, L. 1959; R.C.M. 1947, 43-805(part).

5-7-203. Principal — name of lobbyist on docket. Except as provided in 5-7-304, every principal who employs any lobbyist shall within 1 week after such employment cause the name of said lobbyist to be entered upon the docket. It shall also be the duty of the lobbyist to enter his name upon the docket. Upon the termination of such employment, such fact may be entered opposite the name of the lobbyist either by the lobbyist or the principal.

History: En. Sec. 4, Ch. 157, L. 1959; R.C.M. 1947, 43-804.

5-7-204. Updating docket. Any principal employing any lobbyist shall, when further subjects of legislation are introduced or arise which such lobbyist is to promote or oppose, make or cause to be made additional entries in the docket stating such employment so that the docket will show at all times all subjects of legislation in relation to which the lobbyist is employed or the general statement provided in 5-7-201.

History: En. Sec. 5, Ch. 157, L. 1959; R.C.M. 1947, 43-805(2).

5-7-205. Written authorization of lobbyist. Within 10 days after his registration in the docket, a lobbyist shall file with the secretary of state a written authorization to act as such, signed by his principal.

History: En. Sec. 5, Ch. 157, L. 1959; R.C.M. 1947, 43-805(3).

5-7-206. Copies of statements, arguments, and briefs. Before or within 5 days after a lobbyist delivers any written or printed statement, argument, or brief to the entire membership of either or both houses of the legislature, he shall deposit three copies with the secretary of state.

History: En. Sec. 6, Ch. 157, L. 1959; amd. Sec. 21, Ch. 309, L. 1977; R.C.M. 1947, 43-806(2).

5-7-207. Report to legislature. Beginning with the first week following the beginning of any regular or special session of the legislature and on every Tuesday thereafter for the duration of such session, the secretary of state shall from his records report to each house of the legislature the names of lobbyists registered under this chapter, not previously reported, the names of the persons whom they represent as such lobbyist, and the subject of legislation in which they are interested.

History: En. Sec. 5, Ch. 157, L. 1959; R.C.M. 1947, 43-805(part).

Part 3

Prohibitions — Applicability

5-7-301. Prohibition of practice without license and registration. (1) No person may practice as a lobbyist unless he has been licensed under 5-7-103 and unless he is listed on the docket as employed in respect to such matters as he is promoting or opposing.

(2) No principal may directly or indirectly authorize or permit any lobbyist employed by him to practice lobbying in respect to any legislation affecting the pecuniary interest of the principal until the lobbyist is duly licensed and the name of the lobbyist is duly entered on the docket.

History: **En. Sec. 6, Ch. 157, L. 1959; amd. Sec. 21, Ch. 309, L. 1977; R.C.M. 1947, 43-806(part).**

5-7-302. Prohibited compensation. No person may be employed as a lobbyist for a compensation dependent in any manner upon the passage or defeat of any proposed or pending legislation or upon any other contingency connected with the action of the legislature, of either branch thereof, or of any committee thereof.

History: **En. Sec. 6, Ch. 157, L. 1959; amd. Sec. 21, Ch. 309, L. 1977; R.C.M. 1947, 43-806(part).**

5-7-303. Restrictions — applicability. The restrictions on the practice of lobbying provided by this chapter are effective only during the regular and special sessions of the legislature.

History: **En. Sec. 6, Ch. 157, L. 1959; amd. Sec. 21, Ch. 309, L. 1977; R.C.M. 1947, 43-806(3).**

5-7-304. Exemption from license and registration requirement. Any person who limits his lobbying solely to appearances before legislative committees of either house and registers his appearance on the records of such committees in writing shall not be required to be licensed as a lobbyist, pay a license fee, or register with the secretary of state.

History: **En. Sec. 7, Ch. 157, L. 1959; R.C.M. 1947, 43-807.**

5-7-305. Penalty. Any person violating the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail not more than 6 months or by a fine not exceeding $200, or both.

History: **En. Sec. 8, Ch. 157, L. 1959; R.C.M. 1947, 43-808.**

CHAPTERS 8 THROUGH 10

RESERVED

CHAPTER 11

LEGISLATIVE COUNCIL AND PUBLICATION OF LAWS

Part 1 — Composition—Powers and Duties—Personnel

Section
5-11-101. Appointment and composition of council.
5-11-102. Term.
5-11-103. Vacancies.
5-11-104. Officers — rules of procedure — records.
5-11-105. Powers and duties of council.
5-11-106. Authority to investigate and examine.
5-11-107. Powers relating to hearings.
Sections 5-11-108 through 5-11-110 reserved.

5-11-111. Executive director, personnel, and consultants.
5-11-112. Functional divisions.

Part 2 — Dissemination of Laws and Proceedings

5-11-201. Journals — how authenticated.
5-11-202. Printing of the house and senate journals and session laws.
5-11-203. Distribution of senate and house journals and session laws.
5-11-204. Secretary of state to assign chapter numbers to new laws.
5-11-205. Publication of laws — format.
5-11-206. Index.
5-11-207. Description of county boundaries included in session laws.
5-11-208. Expenses.
Sections 5-11-209 and 5-11-210 reserved.
5-11-211. Definitions.
5-11-212. Fees for proceedings.
5-11-213. Exclusions.
5-11-214. Exemptions from fees.

Part 3 — Interstate Cooperation

5-11-301. Functions of legislative council — interstate cooperation.
5-11-302. Council of state governments.

Part 1

Composition — Powers and Duties — Personnel

5-11-101. Appointment and composition of council. There is a legislative council which consists of:

(1) four members of the house of representatives appointed by the speaker of the house with the advice of the majority and minority leaders of the house, no more than two of whom may be of the same political party; and

(2) four members of the senate appointed by the committee on committees of the senate, no more than two of whom may be of the same political party.

History: En. Sec. 1, Ch. 34, L. 1957; amd. Sec. 1, Ch. 431, L. 1973; amd. Sec. 10, Ch. 309, L. 1977; R.C.M. 1947, 43-709(1).

5-11-102. Term. Membership on the council is for 2 years and terminates with the appointment of a new council or on the 50th legislative day of the next regular session following the one in which the appointment was made, whichever event occurs first. A new council shall be appointed no later than the 50th day of each regular session.

History: En. Sec. 1, Ch. 34, L. 1957; amd. Sec. 1, Ch. 431, L. 1973; amd. Sec. 10, Ch. 309, L. 1977; R.C.M. 1947, 43-709(2).

5-11-103. Vacancies. A vacancy on the legislative council occurring when the legislature is not in session shall be filled by the selection of another member by the same method as the original appointment.

History: En. Sec. 1, Ch. 34, L. 1957; amd. Sec. 1, Ch. 431, L. 1973; amd. Sec. 10, Ch. 309, L. 1977; R.C.M. 1947, 43-709(3).

5-11-104. Officers — rules of procedure — records. The legislative council shall organize immediately following appointment by electing one of its members as its chairman and by electing such other officers from among its membership as the council may deem desirable. The council is empowered to adopt rules of procedure and to make all arrangements for its meetings and to carry out the purpose for which it is created. The council is directed to keep accurate records of its activities and proceedings.

History: **En. Sec. 7, Ch. 34, L. 1957; amd. Sec. 7, Ch. 431, L. 1973; R.C.M. 1947, 43-715.**

5-11-105. Powers and duties of council. (1) If a question of statewide importance arises when the legislature is not in session and a subcommittee has not been appointed to consider the question, the legislative council shall assign the question to an appropriate subcommittee.

(2) The legislative council shall supervise the activities of the council staff.

(3) The legislative council shall assist in the preparation and submission of all standing and select committee and subcommittee reports and recommendations to the legislature.

(4) This section shall not be construed to permit the council to approve or disapprove of any substantive portions or recommendations of a standing or select committee or subcommittee report.

History: **En. Sec. 2, Ch. 34, L. 1957; amd. Sec. 2, Ch. 431, L. 1973; amd. Sec. 11, Ch. 309, L. 1977; R.C.M. 1947, 43-710; amd. Sec. 3, Ch. 596, L. 1979.**

5-11-106. Authority to investigate and examine. The legislative council, on behalf of standing and select committees and subcommittees, shall have authority to investigate and examine the costs of state governmental activities and may examine and inspect all records, books, and files of any department, agency, commission, board, or institution of the state of Montana.

History: **En. Sec. 4, Ch. 34, L. 1957; amd. Sec. 4, Ch. 431, L. 1973; R.C.M. 1947, 43-712.**

5-11-107. Powers relating to hearings. (1) In the discharge of its duties on behalf of standing committees and subcommittees, the legislative council may hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, and cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in district court.

(2) If a person disobeys a subpoena issued by the council on behalf of a standing committee or subcommittee or if a witness refuses to testify on any matters regarding which he may be lawfully interrogated, the district court of any county or a judge thereof shall, on application of the legislative council, compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

History: **En. Sec. 5, Ch. 34, L. 1957; amd. Sec. 5, Ch. 431, L. 1973; amd. Sec. 14, Ch. 309, L. 1977; R.C.M. 1947, 43-713.**

5-11-108 through 5-11-110 reserved.

5-11-111. Executive director, personnel, and consultants. The legislative council may employ an executive director and such other personnel, not members of the council, as it considers necessary to assist in the preparation of proposed legislative acts and standing and select committee and subcommittee reports and recommendations and to carry out other council activities. The council shall fix the compensation of such employees. It may also employ the services of any research agency which it considers necessary in the discharge of its duties.

History: En. Sec. 3, Ch. 34, L. 1957; amd. Sec. 3, Ch. 431, L. 1973; amd. Sec. 1, Ch. 30, L. 1974; effective date amd. Sec. 1, Ch. 12, L. 1975; amd. Sec. 12, Ch. 309, L. 1977; R.C.M. 1947, 43-711(1).

5-11-112. Functional divisions. The legislative council may establish functional divisions within the council staff in order to carry out all of the responsibilities delegated to the council by law or legislative rule. The divisions shall include the following:

(1) legislative services division:

(a) engrossing and enrolling;

(b) mailroom;

(c) printing;

(2) research and reference services division:

(a) general and specialized legislative research;

(b) legislative reference and information, including preparation and publication of the Legislative Review to be sold at the cost of the publication plus postage;

(c) committee staffing when the legislature is not in session;

(3) legal services division:

(a) bill drafting;

(b) legal counseling;

(4) management and business services division, which shall:

(a) maintain bookkeeping records;

(b) sign claims and payrolls;

(c) order all printing, supplies, and equipment; and

(d) serve the house and senate during the session.

History: En. Sec. 3, Ch. 34, L. 1957; amd. Sec. 3, Ch. 431, L. 1973; amd. Sec. 1, Ch. 30, L. 1974; effective date amd. Sec. 1, Ch. 12, L. 1975; amd. Sec. 12, Ch. 309, L. 1977; R.C.M. 1947, 43-711(2).

Part 2

Dissemination of Laws and Proceedings

5-11-201. Journals — how authenticated. The journal of the senate must be authenticated by the signature of the president and the journal of the house of representatives by the signature of the speaker.

History: En. Sec. 203, Pol. C. 1895; re-en. Sec. 70, Rev. C. 1907; re-en. Sec. 68, R.C.M. 1921; Cal. Pol. C. Sec. 256; re-en. Sec. 68, R.C.M. 1935; R.C.M. 1947, 43-304.

5-11-202. Printing of the house and senate journals and session laws. The legislative council shall deliver to the printer entitled to them, at the earliest practicable day after the final adjournment of each session of the legislature, copies of all laws, resolutions, and journals passed, adopted, or kept at the session, with proper indexes to the same.

History: **En. 43-711.1 by Sec. 3, Ch. 96, L. 1973; R.C.M. 1947, 43-711.1; amd. Sec. 2, Ch. 138, L. 1979.**

5-11-203. Distribution of senate and house journals and session laws. (1) Immediately after the senate and house journals and the session laws are bound the legislative council shall distribute them.

(2) The council shall distribute the house and senate journals as follows:

(a) to each county clerk, one copy of each for the use of the county;

(b) to the Montana state library, 20 copies of each for the use of the library and distribution to depository libraries, of which 2 copies will be deposited with the state historical library for security purposes;

(c) to the state law librarian, two copies of each for the use of the library and such additional copies as may be necessary for the purposes of exchange;

(d) to the library of congress and each state officer, two copies of each; and

(e) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives at the session at which the journals were adopted, one copy of each.

(3) The council shall distribute the session laws as follows:

(a) to each department of the government at Washington and of the government of this state, one copy;

(b) to the library of congress, eight copies;

(c) to the state library, two copies;

(d) to the state historical library, two copies;

(e) to the state law librarian, four copies for the use of the library and such additional copies as may be required for exchange with libraries and institutions maintained by other states and territories and public libraries;

(f) to the library of each custodial institution, one copy;

(g) to each Montana member of congress, each United States district judge in Montana, each of the judges of the state supreme and district courts, and each of the state officers, one copy;

(h) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives at the session at which the laws were adopted, one copy;

(i) to each of the incorporated colleges of the state and each unit of the Montana university system, one copy;

(j) to each county clerk, three copies for the use of the county; and

(k) to each county attorney and to each clerk of a district court, one copy.

History: **En. Sec. 1, Ch. 86, L. 1907; re-en. Sec. 155, Rev. C. 1907; amd. Sec. 1, Ch. 126, L. 1921; re-en. Sec. 135, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1929; re-en. Sec. 135, R.C.M. 1935; amd. Sec. 1, Ch. 46, L. 1937; Sec. 82-2203, R.C.M. 1947; redes. 43-711.2 and amd. by Sec. 4, Ch. 96, L. 1973; amd. Sec. 13, Ch. 309, L. 1977; R.C.M. 1947, 43-711.2; amd. Sec. 1, Ch. 65, L. 1979; amd. Sec. 3, Ch. 138, L. 1979.**

5-11-204. Secretary of state to assign chapter numbers to new laws. It shall be the duty of the secretary of state, when bills passed by any legislature of Montana are filed in his office as directed in 5-4-302 and 5-4-305, to note thereon the date of filing and to number such bills, except resolutions and bills appropriating money, in the order of their reception by him, chapter 1 and upwards, using Arabic numerals.

History: En. Sec. 1, Ch. 17, L. 1903; re-en. Sec. 162, Rev. C. 1907; re-en. Sec. 141, R.C.M. 1921; re-en. Sec. 141, L. 1935; R.C.M. 1947, 82-2209; amd. Sec. 4, Ch. 138, L. 1979.

5-11-205. Publication of laws — format. (1) The legislative council shall publish all laws and resolutions passed or adopted by each session of the legislature in a publication to be known as the "Laws of Montana".

(2) Laws of each session other than appropriations must be printed in the Laws of Montana in the order that they have been filed in the office of the secretary of state with the chapter number assigned by the secretary of state as the heading. The chapter number must also appear as part of each page heading. In all laws containing amendments to an existing law, the new parts designated in the act by underlining must be printed in italics in the Laws of Montana. The senate or house bill number may be omitted from each act.

(3) Reference to the laws of a legislative session may be made as follows: "Chapter .... (giving number), Laws of .... (giving the year enacted)".

(4) Appropriations passed by each session of the legislature must be printed in a separate section of the Laws of Montana with the house bill number as a heading.

(5) Resolutions adopted by each session of the legislature must be printed in a separate section of the Laws of Montana with the type of resolution and its number as a heading.

(6) The legislative council shall also publish in the Laws of Montana the indexes required by 5-11-206.

History: En. Sec. 2, Ch. 17, L. 1903; re-en. Sec. 163, Rev. C. 1907; re-en. Sec. 142, R.C.M. 1921; re-en. Sec. 142, L. 1935; amd. Sec. 1, Ch. 10, L. 1939; Sec. 82-2210, R.C.M. 1947; amd. Sec. 1, Ch. 59, L. 1973; redes. 43-711.3 and amd. by Sec. 5, Ch. 96, L. 1973; R.C.M. 1947, 43-711.3; amd. Sec. 5, Ch. 138, L. 1979.

5-11-206. Index. (1) The legislative council shall prepare a suitable index of all the laws and resolutions passed or adopted at each session of the legislature. The index shall be a thorough index of the laws and resolutions and of each subject contained in or covered by the laws and resolutions, together with a cross-index to assist in readily finding any subject contained in each volume.

(2) For the purpose of uniformity in indexes, the index of each succeeding publication of the session laws shall conform as nearly as practicable with those of the volumes preceding it.

(3) There shall also be prepared for each publication of the session laws a "code index" showing what sections of the Montana Code Annotated have been amended or repealed by any laws enacted by that session of the legislature.

History: En. Sec. 11, Ch. 153, L. 1949; amd. Sec. 1, Ch. 128, L. 1973; R.C.M. 1947, 44-411; amd. Sec. 6, Ch. 138, L. 1979.

5-11-207. Description of county boundaries included in session laws. The legislative council shall include in the published session laws a description of the county boundaries of any new counties of the state created by petition and election, commencing with counties created after January 1, 1921, by inserting in each set of session laws new counties that have been created since the publication of the laws of the previous session.

History: En. Sec. 1, Ch. 67, L. 1921; re-en. Sec. 143, R.C.M. 1921; re-en. Sec. 143, R.C.M. 1935; Sec. 82-2211, R.C.M. 1947; redes. 43-711.4 and amd. by Sec. 6, Ch. 96, L. 1973; R.C.M. 1947, 43-711.4; amd. Sec. 7, Ch. 138, L. 1979.

5-11-208. Expenses. The expenses incurred by the legislative council in carrying into effect 5-11-202 through 5-11-207, as amended, must be paid out of money specifically appropriated for that purpose.

History: En. Sec. 409, Pol. C. 1895; re-en. Sec. 164, Rev. C. 1907; re-en. Sec. 144, R.C.M. 1921; re-en. Sec. 144, R.C.M. 1935; amd. Sec. 30, Ch. 97, L. 1961; Sec. 82-2212, R.C.M. 1947; redes. 43-711.5 and amd. by Sec. 7, Ch. 96, L. 1973; R.C.M. 1947, 43-711.5; amd. Sec. 8, Ch. 138, L. 1979.

5-11-209 and 5-11-210 reserved.

5-11-211. Definitions. For the purposes of this part, the following definitions apply:

(1) "Person" means any person, firm, corporation, or association.

(2) "Proceedings of the legislature" means status sheets, daily journals, reproduced bills, reproduced resolutions, printed bills, printed resolutions, and amendments thereto.

(3) "One complete set" means one copy of each item of the proceedings of a session, regular or special, of the legislature.

(4) "Session Laws" for a particular year means the laws and resolutions passed or adopted by that year's session of the legislature.

History: En. Sec. 1, Ch. 223, L. 1959; amd. Sec. 1, Ch. 12, L. 1973; amd. Sec. 1, Ch. 292, L. 1974; R.C.M. 1947, 43-901; amd. Sec. 9, Ch. 138, L. 1979.

5-11-212. Fees for proceedings. (1) A complete set of the proceedings of a regular session of the legislature may be purchased from the secretary of state for the amount prescribed in the joint legislative rules. Upon receipt of payment, the secretary of state shall transmit the name of the purchaser to the executive director of the legislative council, who shall supply the purchaser with a complete set of the proceedings.

(2) A purchaser who requests that a set of the proceedings be mailed shall pay an additional fee as prescribed in the joint legislative rules to the secretary of state for each complete set that is mailed.

(3) Single copies of bills, resolutions, or amendments thereto may be purchased from the legislative council for a price varying with the length of the document as prescribed in the joint rules.

(4) Single copies of status sheets or status of proceedings may be purchased from the legislative council for a price per copy as prescribed in the joint rules. A person may subscribe to receive daily copies of the status sheets or status of proceedings by mail for a fee set by the legislative council to cover the costs of the service.

(5) The executive director of the legislative council and the secretary of state shall account for all funds collected by their respective offices under this section and shall transmit the funds to the treasurer of the state of Montana, who shall credit them to the general fund.

History: En. Sec. 2, Ch. 223, L. 1959; amd. Sec. 1, Ch. 14, L. 1967; amd. Sec. 1, Ch. 5, L. 1969; amd. Sec. 2, Ch. 292, L. 1974; amd. Sec. 22, Ch. 309, L. 1977; R.C.M. 1947, 43-902; amd. Sec. 10, Ch. 138, L. 1979.

5-11-213. Exclusions. Representatives of general circulation newspapers, radio, and television who shall have first registered with the secretary of state shall be exempt from 5-11-212 and shall receive one complete set of the proceedings of the legislature without charge.

History: En. Sec. 3, Ch. 223, L. 1959; amd. Sec. 3, Ch. 292, L. 1974; R.C.M. 1947, 43-903.

5-11-214. Exemptions from fees. All elected state officials, state department heads, the state law library, and county clerk and recorders shall be exempted from 5-11-212.

History: En. Sec. 4, Ch. 223, L. 1959; amd. Sec. 4, Ch. 292, L. 1974; R.C.M. 1947, 43-904.

Part 3

Interstate Cooperation

5-11-301. Functions of legislative council — interstate cooperation. It shall be a function of the legislative council to:

(1) carry forward the participation of the state of Montana as a member of the council of state governments, and the legislative council is hereby designated as the Montana commission on interstate cooperation;

(2) encourage and assist the government of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise with the other states, with the federal government, and with local units of government;

(3) establish such delegations and committees as may be deemed advisable to confer with similar delegations and committees from other states concerning problems of mutual interest. The membership of such delegations and committees may consist of legislators and employees of the state other than members of the legislative council. Members of such delegations and committees shall serve without pay, but they may be reimbursed for expenses as provided by law.

(4) endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for interstate compacts and reciprocal or uniform legislation and by facilitating the adoption of uniform or reciprocal administrative rules and regulations, informal cooperation of governmental offices, personal cooperation among governmental officials and employees, interchange and clearance of research and information, and any other suitable process.

History: En. Sec. 2, Ch. 72, L. 1959; R.C.M. 1947, 82-2112.

5-11-302. Council of state governments. In order to facilitate such cooperation, the council of state governments is hereby declared to be a joint governmental agency of this state and of the other states which cooperate through it.

History: En. Sec. 3, Ch. 72, L. 1959; R.C.M. 1947, 82-2113.

CHAPTER 12

LEGISLATIVE FINANCE ACT

Part 1 — General

Section

5-12-101. Title and purpose of chapter.
5-12-102. Definitions.

Part 2 — Legislative Finance Committee

5-12-201. Legislative finance committee.
5-12-202. Appointment of members.
5-12-203. Term — officers — compensation.
5-12-204. Vacancies.
5-12-205. Powers and duties of committee.

Part 3 — Legislative Fiscal Analyst

5-12-301. Office of legislative fiscal analyst.
5-12-302. Fiscal analyst's duties.
5-12-303. Fiscal analysis information from state agencies.
5-12-304. Employees and consultants.

Part 4 — Budget Admendments

5-12-401. Submission of budget amendments to committee.
5-12-402. Review by legislative fiscal analyst.

Part 1

General

5-12-101. Title and purpose of chapter. (1) This chapter may be cited as "The Legislative Finance Act".

(2) Because the legislature is responsible for appropriating public funds, it must provide for fiscal analysis of state government to accumulate, compile, analyze, and furnish such information bearing upon the financial matters of the state that is relevant to issues of policy and questions of statewide importance.

History: En. 43-1109 by Sec. 1, Ch. 448, L. 1975; R.C.M. 1947, 43-1109.

5-12-102. Definitions. In this chapter, the following definitions apply:

(1) "Budget amendment" means a request submitted through the budget director to the committee for executive branch agencies to expend funds in excess of those appropriated by the legislature.

(2) "Budget director" means the budget director appointed pursuant to 17-7-103.

(3) "Committee" means the legislative finance committee created by this chapter.

(4) "State agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public moneys by virtue of an appropriation from the legislature, that handles money on behalf of the state, or that holds any trust or agency moneys from any source.

History: (1)En. 43-1117 by Sec. 1, Ch. 510, L. 1975; Sec. 43-1117, R.C.M. 1947; (2) thru (4)En. 43-1110 by Sec. 2, Ch. 448, L. 1975; Sec. 43-1110, R.C.M. 1947; R.C.M. 1947, 43-1110, 43-1117.

Part 2

Legislative Finance Committee

5-12-201. Legislative finance committee. There is a legislative finance committee which is a permanent joint committee of the legislature.

History: En. 43-1111 by Sec. 3, Ch. 448, L. 1975; amd. Sec. 23, Ch. 309, L. 1977; R.C.M. 1947, 43-1111(part).

5-12-202. Appointment of members. (1) The legislative finance committee consists of:

(a) four members of the senate finance and claims committee appointed by the chairman;

(b) two members of the senate appointed at large by the committee on committees;

(c) four members of the house of representatives appropriations committee appointed by the chairman; and

(d) two members of the house appointed at large by the speaker.

(2) These members shall be appointed before the end of each legislative session. No more than three members of each house, two committee members and one at-large member, may be from the same political party.

History: En. 43-1112 by Sec. 4, Ch. 448, L. 1975; amd. Sec. 5, Ch. 103, L. 1977; R.C.M. 1947, 43-1112(1), (2).

5-12-203. Term — officers — compensation. (1) Appointments are for 2 years, and a member of the committee shall serve until his term of office as a legislator ends or until his successor is appointed, whichever occurs first.

(2) The committee shall elect one of its members as chairman and such other officers as it considers necessary.

(3) Members of the committee are entitled to receive compensation and expenses as provided in 5-2-302.

History: En. 43-1112 by Sec. 4, Ch. 448, L. 1975; amd. Sec. 5, Ch. 103, L. 1977; R.C.M. 1947, 43-1112(4), (5), (6).

5-12-204. Vacancies. If a vacancy occurs on the committee when the legislature is not in session, the remaining members shall select a member of the appropriate political party and appropriate committee, as provided in 5-12-202, to complete the unexpired term.

History: En. 43-1112 by Sec. 4, Ch. 448, L. 1975; amd. Sec. 5, Ch. 103, L. 1977; R.C.M. 1947, 43-1112(3).

5-12-205. Powers and duties of committee. The committee may:

(1) organize, adopt rules to govern its proceedings, and meet as often as necessary, upon the call of the chairman, to advise and consult with the legislative fiscal analyst;

(2) employ and set the salary of the legislative fiscal analyst, who shall serve at the pleasure of and be responsible to the committee; and

(3) exercise the investigatory powers of a standing committee under chapter 5, part 1, of this title.

History: En. 43-1113 by Sec. 5, Ch. 448, L. 1975; R.C.M. 1947, 43-1113.

Part 3

Legislative Fiscal Analyst

5-12-301. Office of legislative fiscal analyst. There is an office of legislative fiscal analyst. The legislative fiscal analyst shall carry out the provisions of this chapter.

History: En. 43-1111 by Sec. 3, Ch. 448, L. 1975; amd. Sec. 23, Ch. 309, L. 1977; R.C.M. 1947, 43-1111(part).

5-12-302. Fiscal analyst's duties. The legislative fiscal analyst shall:

(1) provide for fiscal analysis of state government and accumulate, compile, analyze, and furnish such information bearing upon the financial matters of the state that is relevant to issues of policy and questions of statewide importance, including but not limited to investigation and study of the possibilities of effecting economy and efficiency in state government;

(2) estimate revenue from existing and proposed taxes;

(3) analyze the executive budget and budget requests of selected state agencies and institutions, including proposals for the construction of capital improvements;

(4) make the reports and recommendations he deems desirable to the legislature and make reports and recommendations as requested by the legislative finance committee and the legislature; and

(5) assist committees of the legislature and individual legislators in compiling and analyzing financial information.

History: En. 43-1114 by Sec. 6, Ch. 448, L. 1975; R.C.M. 1947, 43-1114.

5-12-303. Fiscal analysis information from state agencies. (1) The legislative fiscal analyst has the authority to investigate and examine the costs of state government activities and may examine the records, books, and files of any state agency, including confidential records of executive branch agencies.

(2) Every state agency shall furnish the legislative fiscal analyst with copies of all budget requests, at the time of submission to the budget director as provided by law, and if requested, all underlying and supporting documentation.

(3) In the year preceding each legislative session, the budget director shall furnish the legislative fiscal analyst on a confidential basis:

(a) by December 1, a copy of the documents which reflect the anticipated receipts and other means of financing the budget for each fiscal year of the ensuing biennium;

(b) by December 1, a preliminary budget which shall meet the statutory requirements for submission of the budget to the legislature; and

(c) by December 15, all amendments to the preliminary budget.

History: En. 43-1115 by Sec. 7, Ch. 448, L. 1975; R.C.M. 1947, 43-1115.

5-12-304. Employees and consultants. The legislative fiscal analyst may employ, fix the salaries, and define the duties of such staff and consultants as may be necessary, within the limits of his appropriation.

History: En. 43-1116 by Sec. 8, Ch. 448, L. 1975; R.C.M. 1947, 43-1116.

Part 4

Budget Amendments

5-12-401. Submission of budget amendments to committee. All budget amendments for state agencies must be submitted through the budget director to the committee. No state agency shall expend in excess of the appropriation except under authority of a budget amendment.

History: En. 43-1118 by Sec. 2, Ch. 510, L. 1975; amd. Sec. 24, Ch. 309, L. 1977; R.C.M. 1947, 43-1118.

5-12-402. Review by legislative fiscal analyst. The legislative fiscal analyst shall review proposed budget amendments submitted to the committee from the budget director and make recommendations to the committee concerning proposed budget amendments.

History: En. 43-1119 by Sec. 3, Ch. 510, L. 1975; R.C.M. 1947, 43-1119.

CHAPTER 13

LEGISLATIVE AUDIT ACT

Part 1 — General

Section
5-13-101. Title and purpose of chapter.
5-13-102. Definitions.

Part 2 — Legislative Audit Committee

5-13-201. Legislative audit committee.
5-13-202. Appointment and term of members — officers — vacancies.
5-13-203. Meetings — compensation.

Part 3 — Legislative Auditor

5-13-301. Office of legislative auditor.
5-13-302. Appointment and qualifications.
5-13-303. Term and removal.
5-13-304. Powers and duties.
5-13-305. Employees, consultants, and legal counsel.
5-13-306. Legislative auditor to assist legislature during sessions.
5-13-307. Recommendations of legislative auditor.
5-13-308. Audit standards and objectives.
5-13-309. Information from state agencies.
5-13-310. Prosecution — discipline of professionals.

Part 1

General

5-13-101. Title and purpose of chapter. (1) This chapter may be cited as "The Legislative Audit Act".

(2) Because the legislature is responsible for authorizing the expenditure of public moneys, designating the sources from which moneys may be collected, and shaping the administration to perform the work of state government and is held finally accountable for fiscal policy, the legislature should also be responsible for the audit of fiscal accounts and records so that it may be assured that its directives have been faithfully carried out. It is the intent of this chapter that each agency of state government be audited for the purpose of furnishing the legislature with factual information vital to the discharge of its legislative duties.

History: En. Sec. 1, Ch. 249, L. 1967; R.C.M. 1947, 79-2301.

5-13-102. Definitions. In this chapter:

(1) "state agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public moneys by virtue of an appropriation from the legislature or that handles money on behalf of the state or that holds any trust or agency moneys from any source;

(2) "committee" means the legislative audit committee.

History: En. Sec. 2, Ch. 249, L. 1967; R.C.M. 1947, 79-2302.

Part 2

Legislative Audit Committee

5-13-201. Legislative audit committee. There is a legislative audit committee which is a permanent joint committee of the legislature.

History: En. 79-2303.1 by Sec. 1, Ch. 367, L. 1974; amd. Sec. 25, Ch. 309, L. 1977; R.C.M. 1947, 79-2303.1(1).

5-13-202. Appointment and term of members — officers — vacancies. (1) The legislative audit committee consists of four members of the senate and four members of the house of representatives appointed before the 60th legislative day of each regular session in the same manner as standing committees of the respective houses are appointed. No more than two of the appointees of each house may be members of the same political party.

(2) A member of the committee shall serve until his term of office as a legislator ends or until his successor is appointed, whichever occurs first.

(3) The committee shall elect one of its members as chairman and such other officers as it considers necessary.

(4) A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the remaining members of the committee.

History: En. Sec. 3, Ch. 249, L. 1967; Sec. 79-2303, R.C.M. 1947; amd. and redes. 79-2304 by Sec. 2, Ch. 367, L. 1974; amd. Sec. 26, Ch. 309, L. 1977; R.C.M. 1947, 79-2304.

5-13-203. Meetings — compensation. (1) The committee shall meet as often as may be necessary during and between legislative sessions to advise and consult with the legislative auditor.

(2) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

History: En. Sec. 4, Ch. 249, L. 1967; Sec. 79-2304, R.C.M. 1947; amd. and redes. 79-2305 by Sec. 3, Ch. 367, L. 1974; amd. Sec. 8, Ch. 103, L. 1977; R.C.M. 1947, 79-2305.

Part 3

Legislative Auditor

5-13-301. Office of legislative auditor. There is an office of the legislative auditor. The legislative auditor is responsible for performing the duties imposed by this chapter.

History: En. 79-2303.1 by Sec. 1, Ch. 367, L. 1974; amd. Sec. 25, Ch. 309, L. 1977; R.C.M. 1947, 79-2303.1(2).

5-13-302. Appointment and qualifications. (1) The committee shall appoint the legislative auditor and set his salary.

(2) The legislative auditor shall hold a degree from an accredited college or university with a major in accounting or an allied field and shall have at least 2 years' experience in the field of governmental accounting and auditing.

History: **En. Sec. 5, Ch. 249, L. 1967; Sec. 79-2305, R.C.M. 1947; redes. 79-2307 by Sec. 8, Ch. 367, L. 1974; R.C.M. 1947, 79-2307.**

5-13-303. Term and removal. The legislative auditor is responsible solely to the legislature. He shall hold office for a term of 2 years beginning with July 1 of each odd-numbered year. The committee may remove him for misfeasance, malfeasance, or nonfeasance in office at any time after notice and hearing.

History: **En. Sec. 7, Ch. 249, L. 1967; Sec. 79-2307, R.C.M. 1947; redes. 79-2309 by Sec. 8, Ch. 367, L. 1974; R.C.M. 1947, 79-2309.**

5-13-304. Powers and duties. The legislative auditor shall:

(1) audit the financial affairs and transactions of every state agency;

(2) make a complete written report of each audit. A copy of each report shall be furnished to the department of administration, the state agency which was audited, each member of the committee, and the legislative council.

(3) report immediately in writing to the attorney general and the governor any apparent violation of penal statutes disclosed by the audit of a state agency and furnish the attorney general with all information in his possession relative to the violation;

(4) report immediately in writing to the governor any instances of misfeasance, malfeasance, or nonfeasance by a state officer or employee disclosed by the audit of a state agency;

(5) report immediately to the surety upon the bond of an official or employee when an audit discloses a shortage in the accounts of the official or employee. Failure to notify the surety does not release the surety from any obligation under the bond.

(6) report to the legislature during the first week of each regular session. The report shall contain, among other things, copies of or summaries of audit reports on state agencies and any recommendations relating to such reports.

(7) have the authority to audit records of organizations and individuals receiving grants from or on behalf of the state to determine that the grants are administered in accordance with the grant terms and conditions. Whenever a state agency enters into an agreement to grant resources under its control to others, the agency must obtain the written consent of the grantee to the audit provided for in this subsection.

History: **En. Sec. 8, Ch. 249, L. 1967; amd. Sec. 98, Ch. 326, L. 1974; Sec. 79-2308, R.C.M. 1947; amd. and redes. 79-2310 by Sec. 5, Ch. 367, L. 1974; amd. Sec. 27, Ch. 309, L. 1977; R.C.M. 1947, 79-2310.**

5-13-305. Employees, consultants, and legal counsel. The legislative auditor may appoint whatever employees and consultants are necessary to carry out the provisions of this chapter, within the limitations of legislative appropriations. The legislative auditor may employ legal counsel to conduct proceedings under this chapter.

History: En. Sec. 6, Ch. 249, L. 1967; Sec. 79-2306, R.C.M. 1947; amd. and redes. 79-2308 by Sec. 4, Ch. 367, L. 1974; R.C.M. 1947, 79-2308.

5-13-306. Legislative auditor to assist legislature during sessions. During sessions of the legislature, the legislative auditor and his staff, when requested, shall assist the legislature, its committees, and its members by gathering and analyzing information relating to the fiscal affairs of state government.

History: En. Sec. 11, Ch. 249, L. 1967; Sec. 79-2311, R.C.M. 1947; redes. 79-2311.1 by Legislative Council, 1974; R.C.M. 1947, 79-2311.1.

5-13-307. Recommendations of legislative auditor. The reports of the legislative auditor may include comments, recommendations, and suggestions, but he shall have no power to enforce them nor shall he otherwise influence or direct executive or legislative action.

History: En. Sec. 10, Ch. 249, L. 1967; Sec. 79-2310, R.C.M. 1947; amd. and redes. 79-2312 by Sec. 6, Ch. 367, L. 1974; R.C.M. 1947, 79-2312.

5-13-308. Audit standards and objectives. The objectives of audits of state agencies conducted by the legislative auditor are to determine whether:

(1) the agency is carrying out only those activities or programs authorized by the legislature and is conducting them efficiently and effectively;

(2) expenditures are made only in furtherance of authorized activities and in accordance with the requirements of applicable laws and regulations;

(3) the agency collects and accounts properly for all revenues and receipts arising from its activities;

(4) the assets of the agency or in its custody are adequately safeguarded and controlled and utilized in an efficient manner;

(5) reports and financial statements by the agency to the governor, the legislature, and central control agencies disclose fully the nature and scope of the activities conducted and provide a proper basis for evaluating the agency's operations.

History: En. Sec. 9, Ch. 249, L. 1967; Sec. 79-2309, R.C.M. 1947; redes. 79-2311 by Sec. 8, Ch. 367, L. 1974; R.C.M. 1947, 79-2311.

5-13-309. Information from state agencies. (1) All state agencies shall aid and assist the legislative auditor in the auditing of books, accounts, and records.

(2) The legislative auditor may examine at any time the books, accounts, and records, confidential or otherwise, of a state agency. This shall not be construed as authorizing the publication of information which the law prohibits publishing.

(3) The head of each state agency shall immediately notify the legislative auditor in writing upon the discovery of any theft, actual or suspected, involving state moneys or property under his control or for which he is responsible.

History: En. Sec. 12, Ch. 249, L. 1967; amd. Sec. 1, Ch. 270, L. 1971; Sec. 79-2312, R.C.M. 1947; amd. and redes. 79-2314 by Sec. 7, Ch. 367, L. 1974; amd. Sec. 62, Ch. 359, L. 1977; R.C.M. 1947, 79-2314.

5-13-310. Prosecution — discipline of professionals. (1) The attorney general shall conduct on behalf of the state all prosecutions for public offenses disclosed by an audit of a state agency performed by the legislative auditor.

(2) If the attorney general shall decline such prosecution or shall fail to commence action on a public offense within a reasonable time, the county attorney of the appropriate county shall conduct on behalf of the state such prosecution.

(3) In any action taken by the attorney general or any county attorney under this section, wherein any professional person in the state of Montana is charged or may have engaged in unethical conduct, all records or certified copies of such records, including investigative materials, shall be turned over to the appropriate disciplinary authority of his or her profession immediately upon completion of the action.

History: En. Sec. 1, Ch. 4, L. 1974; amd. Sec. 1, Ch. 458, L. 1975; R.C.M. 1947, 79-2315.

CHAPTER 14

ADMINISTRATIVE CODE COMMITTEE

Part 1 — Composition, Terms, and Officers

Section
5-14-101. Appointment and composition.
5-14-102. Term of office.
5-14-103. Vacancies.
5-14-104. Officers.

Part 1

Composition, Terms, and Officers

5-14-101. Appointment and composition. The administrative code committee consists of four members of the senate and four members of the house of representatives appointed before the 60th legislative day of the regular session in the same manner as standing committees of the respective houses are appointed. No more than two of the appointees of each house may be members of the same political party.

History: En. 82-4203.2 by Sec. 1, Ch. 410, L. 1975; amd. Sec. 5, Ch. 285, L. 1977; R.C.M. 1947, 82-4203.2(part).

5-14-102. Term of office. A member of the committee shall serve until his term of office as a legislator ends or until the end of the 60th legislative day of the session of the biennium following his appointment or until his successor is appointed, whichever occurs first.

History: En. 82-4203.2 by Sec. 1, Ch. 410, L. 1975; amd. Sec. 5, Ch. 285, L. 1977; R.C.M. 1947, 82-4203.2(part).

5-14-103. Vacancies. A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the remaining members of the committee.

History: **En. 82-4203.2 by Sec. 1, Ch. 410, L. 1975; amd. Sec. 5, Ch. 285, L. 1977; R.C.M. 1947, 82-4203.2(part).**

5-14-104. Officers. The committee shall elect one of its members as chairman and such other officers as it considers necessary.

History: **En. 82-4203.2 by Sec. 1, Ch. 410, L. 1975; amd. Sec. 5, Ch. 285, L. 1977; R.C.M. 1947, 82-4203.2(part).**

CHAPTER 15

LEGISLATIVE CONSUMER COMMITTEE CONSUMER COUNSEL

Part 1 — Legislative Consumer Committee

Section

5-15-101. Legislative consumer committee — appointment and composition.
5-15-102. Ineligibility for appointment.
5-15-103. Term of office.
5-15-104. Vacancies.
5-15-105. Officers.

Part 2 — Consumer Counsel

5-15-201. Consumer counsel — appointment and qualifications.

Part 1

Legislative Consumer Committee

5-15-101. Legislative consumer committee — appointment and composition. (1) There is a legislative consumer committee consisting of two members of the senate and two members of the house of representatives.

(2) Members shall be appointed in the same manner as standing committees of the respective houses before the 60th legislative day of the legislative session following the expiration of the terms of the members of the committee. No more than one of the appointees of each house may be members of the same political party.

History: **En. Sec. 3, Ch. 65, L. 1973; R.C.M. 1947, 70-703(part).**

5-15-102. Ineligibility for appointment. Any person who is an employee, agent, officer, partner, or director of any regulated company or who has served a regulated company in any capacity within the 3 years previous to his appointment may not be a member of the committee.

History: **En. Sec. 3, Ch. 65, L. 1973; R.C.M. 1947, 70-703(3).**

5-15-103. Term of office. A member shall serve until his term of office as a legislator ends and until his successor is appointed.

History: **En. Sec. 3, Ch. 65, L. 1973; R.C.M. 1947, 70-703(6).**

5-15-104. Vacancies. A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a legislator by the remaining members of the committee.

History: **En. Sec. 3, Ch. 65, L. 1973; R.C.M. 1947, 70-703(4).**

5-15-105. Officers. The committee shall elect one of its members as chairman and such other officers as it determines necessary.

History: **En. Sec. 3, Ch. 65, L. 1973; R.C.M. 1947, 70-703(7).**

Part 2

Consumer Counsel

5-15-201. Consumer counsel — appointment and qualifications. The committee shall appoint a consumer counsel and set his salary. The consumer counsel shall have the following minimum qualifications and such additional qualifications as the committee determines appropriate:

(1) a bachelor's degree or equivalent from an accredited college or university with a major or minor in accounting or allied fields;

(2) be admitted to practice law in Montana courts and in the United States district court for the state of Montana.

History: **En. Sec. 5, Ch. 65, L. 1973; R.C.M. 1947, 70-705.**

CHAPTER 16

ENVIRONMENTAL QUALITY COUNCIL

Part 1 — Composition, Terms, and Officers

Section

5-16-101. Appointment and composition.
5-16-102. Qualifications.
5-16-103. Term of office.
5-16-104. Vacancies.
5-16-105. Officers.

Part 1

Composition, Terms, and Officers

5-16-101. Appointment and composition. The environmental quality council shall consist of 13 members to be as follows:

(1) the governor or his designated representative shall be an ex officio member of the council and shall participate in council meetings as a nonvoting member;

(2) four members of the senate and four members of the house of representatives appointed before the 50th legislative day in the same manner as standing committees of the respective houses are appointed. No more than two of the appointees of each house shall be members of the same political party.

(3) four members of the general public. Two public members shall be appointed by the speaker of the house with the consent of the house minority leader, and two shall be appointed by the president of the senate with the consent of the senate minority leader.

History: En. Sec. 8, Ch. 238, L. 1971; amd. Sec. 1, Ch. 492, L. 1975; amd. Sec. 1, Ch. 204, L. 1977; R.C.M. 1947, 69-6508(part).

5-16-102. Qualifications. In considering the appointments under subsections (2) and (3) of 5-16-101, consideration shall be given to their qualifications to:

(1) analyze and interpret environmental trends and information of all kinds;

(2) appraise programs and activities of the state government in the light of the policy set forth in 75-1-103;

(3) be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the state; and

(4) formulate and recommend state policies to promote the improvement of the quality of the environment.

History: En. Sec. 8, Ch. 238, L. 1971; amd. Sec. 1, Ch. 492, L. 1975; amd. Sec. 1, Ch. 204, L. 1977; R.C.M. 1947, 69-6508(part).

5-16-103. Term of office. The terms of office of all council members shall be 2 years and shall terminate upon appointment of a new council before the 50th legislative day. Council members may be reappointed. However, in no case shall a member serve more than 6 years.

History: En. Sec. 9, Ch. 238, L. 1971; amd. Sec. 2, Ch. 492, L. 1975; R.C.M. 1947, 69-6509(1).

5-16-104. Vacancies. A vacancy on the council of a member appointed under 5-16-101(2) occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the same method as the original appointment.

History: En. Sec. 8, Ch. 238, L. 1971; amd. Sec. 1, Ch. 492, L. 1975; amd. Sec. 1, Ch. 204, L. 1977; R.C.M. 1947, 69-6508(part).

5-16-105. Officers. The council shall elect one of its members as chairman and such other officers as it deems necessary. Such officer shall be elected for a term of 2 years.

History: En. Sec. 9, Ch. 238, L. 1971; amd. Sec. 2, Ch. 492, L. 1975; R.C.M. 1947, 69-6509(2).

CHAPTER 17

CAPITOL BUILDING AND PLANNING COMMITTEE

Part 1 — Composition, Terms, and Officers

Section
5-17-101. Capitol building and planning committee — appointment, composition, and meetings.
5-17-102. Function of committee — capitol area master plan.
5-17-103. Report to legislature.
5-17-104. Compensation and expenses.

Part 1

Composition, Terms, and Officers

5-17-101. Capitol building and planning committee — appointment, composition, and meetings. (1) There is a capitol building and planning committee consisting of eight members as follows:

(a) two members of the house of representatives appointed by the speaker on a bipartisan basis;

(b) two members of the senate appointed by the committee on committees on a bipartisan basis;

(c) the director of the department of administration;

(d) the administrator of the architectural and engineering division of the department of administration;

(e) a representative of the governor's office designated by the governor; and

(f) the director of the Lewis and Clark areawide planning organization who shall serve as a nonvoting member.

(2) The committee shall select a chairman who may call meetings at his discretion for the conduct of committee business.

History: **En. Sec. 1, Ch. 141, L. 1979.**

Compiler's Comments

Repealer. Sec. 5, Ch. 141, L. 1979, provided: "Sections 1 through 4 of Chapter 232, Laws of Montana, 1971, section 25 of Chapter 326, Laws of Montana, 1974, and section 54 of Chapter 439, Laws of Montana, 1975, are repealed."

5-17-102. Function of committee — capitol area master plan. (1) The function of the committee is to establish and maintain a master plan for the orderly development of state buildings in the immediate area of the capital city. The master plan shall be developed and maintained with consideration given to the following factors:

(a) the needs of the state relative to the location and design of buildings to be constructed, purchase of land, parking facilities, traffic management, and landscaping;

(b) the ordinances, plans, requirements, and proposed improvements of the city of Helena and Lewis and Clark County based without limitation upon zoning regulations, population trends, and plans for rapid transit development;

(c) any other factors that bear upon the orderly, integrated, and cooperative development of the state, the city of Helena, Lewis and Clark County, and of state property in the immediate area of the capital city.

(2) The committee shall consult with and advise the department of administration concerning the assignment of space in the capitol complex and the actual placement of busts, statues, memorials, or art displays of a permanent nature within public areas of the capitol complex. No such item may be permanently displayed unless authorized by the legislature.

(3) The committee shall serve as a long-range building committee to recommend to the legislature and the department of administration construction and remodeling priorities for the capitol complex.

History: **En. Sec. 2, Ch. 141, L. 1979.**

5-17-103. Report to legislature. The committee shall prepare a written report of its activities and recommendations and present the report to the legislature at each regular session. To prepare its report and recommendations, the committee may receive assistance from the legislative council.

History: **En. Sec. 3, Ch. 141, L. 1979.**

5-17-104. Compensation and expenses. Legislative members are entitled to receive compensation and expenses as provided in 5-2-302 while engaged in committee business.

History: **En. Sec. 4, Ch. 141, L. 1979.**

CHAPTER 18

REVENUE OVERSIGHT COMMITTEE

Part 1 — Composition—Powers and Duties

Section
5-18-101. Definitions.
5-18-102. Revenue oversight committee — appointment and composition.
5-18-103. Term of office.
5-18-104. Vacancies.
5-18-105. Officers.
5-18-106. Meetings and compensation.
5-18-107. Powers and duties of the committee — duty to review revenue rules — legislative oversight of the department of revenue — committee reports.
5-18-108. Biennial critique.
5-18-109. Legislative intent — poll.
5-18-110. Evidentiary value of legislative poll.

Part 1

Composition — Powers and Duties

5-18-101. Definitions. In this chapter "committee" means the revenue oversight committee created in 5-18-102.

History: **En. Sec. 1, Ch. 268, L. 1979.**

5-18-102. Revenue oversight committee — appointment and composition. (1) There is a revenue oversight committee.

(2) The committee consists of:

(a) six members of the senate appointed by the committee on committees in consultation with the chairman of the senate taxation committee and the minority leader of the senate;

(b) six members of the house of representatives appointed by the speaker in consultation with the chairman of the house taxation committee and the minority leader of the house.

(3) No more than three members from each house may be of the same political party.

(4) Members must be appointed before the 90th legislative day of a regular session.

History: En. Sec. 2, Ch. 268, L. 1979.

Compiler's Comments

Effective date. Sec. 13, Ch. 268, L. 1979, provided: "This act is effective on its passage and approval." Approved March 26, 1979.

5-18-103. Term of office. Appointments to the committee are for 2 years. A member of the committee serves until his term of office as a legislator is ended or his successor is appointed, whichever occurs first.

History: En. Sec. 3, Ch. 268, L. 1979.

5-18-104. Vacancies. (1) A vacancy occurring during a legislative session must be filled in the same manner as the original appointment.

(2) A vacancy occurring when the legislature is not in session must be filled by the selection of a member of the appropriate house and political party by the remaining members of the committee.

(3) An appointment to the committee under this section is for the unexpired term of the original member.

History: En. Sec. 4, Ch. 268, L. 1979.

5-18-105. Officers. The committee shall elect one of its members as chairman and may elect other officers it considers necessary.

History: En. Sec. 5, Ch. 268, L. 1979.

5-18-106. Meetings and compensation. (1) The committee shall meet as often as may be necessary during and between legislative sessions.

(2) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

History: En. Sec. 6, Ch. 268, L. 1979.

5-18-107. Powers and duties of the committee — duty to review revenue rules — legislative oversight of the department of revenue — committee reports. (1) The committee shall review all proposed rules of the department of revenue filed with the secretary of state.

(2) The committee may:

(a) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit the recommendations to the department of revenue whenever a rulemaking hearing will not be held in accordance with the provisions of 2-4-302 through 2-4-305;

(b) prepare recommendations for the adoption, amendment, or rejection of a rule and submit oral or written testimony at a rulemaking hearing;

(c) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(d) recommend to the legislature the repeal, amendment, or adoption of a rule as provided in 2-4-412.

(3) The committee shall exercise legislative oversight of the department of revenue, including without limitation the review of:

(a) proposed budgets;

(b) proposed legislation;

(c) pending litigation; and

(d) major contracts and personnel actions of the department.

(4) The committee may investigate and issue reports on any matter concerning taxation or the department of revenue.

History: En.Sec. 7, Ch. 268, L. 1979.

Compiler's Comments

Additional powers and duties. Sec. 2, Ch. 710, L. 1979, provided: "Section 4, Chapter 458, Laws of 1977, is amended to read:

'Section 4. **Committee duties.** (1) The committee shall make interim studies of the statewide reappraisal of real property and its property tax consequences, the taxation of financial institutions by methods which could replace the bank shares tax, and the appropriate level of taxation of the gross proceeds of metal mines. The committee may also exercise continuing legislative oversight of the department of revenue, including without limitation the review of:

(a) proposed and adopted rules;

(b) proposed budgets;

(c) proposed legislation;

(d) pending litigation; and

(e) major contracts and personnel actions of the department.

(2) The committee shall:

(a) consider any method proposed in any rule published by the department of revenue to appraise real property to determine whether the method is general and uniform for similar types of property;

(b) prepare written recommendations for the adoption, amendment, or rejection of the rule;

(c) submit these recommendations to the department.

(3) The committee shall prepare a biennial critique of the department's activities, which shall be published by the department as an appendix to the biennial report of the department.'" Chapter 458, L. 1977, was by its own terms effective only through the adjournment of the 1979 Legislature. However, the substance of that chapter was continued in Ch. 268, L. 1979.

5-18-108. Biennial critique. The committee shall prepare a biennial critique of the department of revenue's activities that the department shall publish as an appendix to the biennial report of the department.

History: En.Sec. 8, Ch. 268, L. 1979.

5-18-109. Legislative intent — poll. (1) If the legislature is not in session, the committee may poll the members of the legislature by mail to determine whether a proposed rule of the department of revenue is consistent with the intent of the legislature.

(2) If 20 or more legislators object in writing to any rule of the department of revenue, the committee shall poll the members of the legislature.

(3) The poll shall include an opportunity for the department of revenue to present a written justification for the rule to the members of the legislature.

History: En.Sec. 9, Ch. 268, L. 1979.

5-18-110. Evidentiary value of legislative poll. (1) The results of a poll conducted by the committee are admissible in a court proceeding involving the validity of a rule.

(2) If the results of the poll show that the majority of the members of both houses find a rule contrary to the intent of the legislature, the rule shall be conclusively presumed to be contrary to the legislative intent in a court proceeding involving its validity.

History: En.Sec. 10, Ch. 268, L. 1979.

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